

Bauer, Jaime (DEQ)

From: Durant, Joseph M. [jdurant@nnva.gov]
Sent: Monday, March 30, 2015 1:08 PM
To: Bauer, Jaime (DEQ)
Subject: Stormwater MS4 Permit;
Attachments: Comments.pdf

Ms. Bauer,

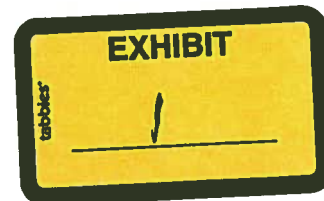
Attached is an electronic version of the Comments of the City of Newport News to the Draft MS4 Permit. The exhibits will follow. The hard copy will be delivered to your office today.

Joe

Joseph M. DuRant
Deputy City Attorney
2400 Washington Ave.
Newport News, Virginia 23607

Direct Dial: (757) 926-3702
Facsimile: (757) 926-8549
E-mail: jdurant@nnva.gov

This message is being sent on behalf of an attorney. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure due to attorney-client privilege and work product doctrines. It also is exempt under the Virginia Freedom of Information Act, Va. Code §2.2-3705.1(2) and (3). If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of this message.



Permit No.: VA0088641
Effective Date:
Expiration Date: [5 years after effective date]

**AUTHORIZATION TO DISCHARGE UNDER THE
VIRGINIA STORMWATER MANAGEMENT PROGRAM AND THE VIRGINIA STORMWATER MANAGEMENT ACT**

Pursuant to the Clean Water Act as amended and the Virginia Stormwater Management Act and regulations adopted pursuant thereto, the following owner is authorized to discharge in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in this state permit.

Permittee: City of Newport News
Facility Name: City of Newport News Municipal Separate Storm Sewer System
County Location: City of Newport News is over 68 square miles in area and is bordered on the east by the City of Hampton, bordered on the south by the James River, bordered on the north by York County, and bordered on the west by James City County.

The owner is authorized to discharge from municipal-owned or operated storm sewer outfalls to the surface waters in the following watersheds:

Receiving Waters and Watersheds:	Stormwater from the City of Newport News discharges into ten 6 th order hydrologic units: James River-Skiffes Creek (JL35) James River-Cooper Creek (JL43) Warwick River (JL38) Southwest Branch Back River (CB23) Lower Chesapeake Bay-Poquoson River (CB21) Hampton Roads-Hampton River (JL58) James River-Morrisons Creek (JL37) Hampton Roads Channel (JL59) Northwest Branch Back River (CB22) Nansemond River-Bennett Creek (JL49)	
River Basins:	Lower James River, Chesapeake Bay/Atlantic and Small Coastal	
Sections:	1, 1a, 1m, 2, 2d	
Classes:	II, III	
Special Standards:	a, z, bb, PWS	

The authorized discharge shall be in accordance with this cover page, Part I – Authorization, Effluent Limitations and Monitoring Requirements and Part II - Conditions Applicable To All VSMP MS4 Permits, as set forth herein.

Director, Department of Environmental Quality

Date

PART I-AUTHORIZATION, EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. DISCHARGES AUTHORIZED UNDER THIS STATE PERMIT

1. Authorized Discharges

- a) This state permit authorizes the discharge of stormwater from all existing and new municipal separate stormwater point source discharges to surface waters from the Municipal Separate Storm Sewer System (MS4) owned or operated by the City of Newport News in Virginia.
- b) The following discharges, whether discharged separately or commingled with municipal stormwater, are also authorized by this state permit for discharge through the MS4:
 - 1) Non-stormwater discharges and stormwater discharges associated with industrial activity (defined at 9 VAC 25-31-10) that are authorized by a separate Virginia Pollutant Discharge Elimination System (VPDES) permit;
 - 2) Discharges from construction activities that are regulated under the Virginia Stormwater Management Program (VSMP) (9 VAC 25-870-10 et seq.) and authorized by a separate VSMP authority permit or state permit; and
 - 3) The following non-stormwater discharges unless the State Water Control Board or the permittee determines the discharge to be a significant source of pollutants to surface waters:
 - (a) water line flushing;
 - (b) landscape irrigation;
 - (c) diverted stream flows;
 - (d) rising ground waters;
 - (e) uncontaminated ground water infiltration (as defined at 40 CFR Part 35.2005(20));
 - (f) uncontaminated pumped ground water;
 - (g) discharges from potable water sources;
 - (h) foundation drains;
 - (i) air conditioning condensation;
 - (j) irrigation water;
 - (k) springs;
 - (l) water from crawl space pumps;
 - (m) footing drains;
 - (n) lawn watering;
 - (o) individual residential car washing;

- (p) flows from riparian habitats and wetlands;
(q) dechlorinated swimming pool discharges;
(r) street wash water;
(s) discharges or flows from fire fighting activities; and
(t) other activities generating discharges identified by the Department as not requiring VPDES authorization.

- 4) Materials from a spill are not authorized unless the discharge of material resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage. The permittee shall take, or require the responsible party to take, all reasonable steps to minimize or prevent any adverse effect on human health or the environment in accordance with the permittee's program under Part I.B.2.f). (Spill Prevention and Response). This state permit does not transfer liability for a spill itself from the party(ies) responsible for the spill to the permittee nor relieve the party(ies) responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302. The permittee is responsible for any reporting requirement listed under Part II.G of this state permit.

2. Permittee Responsibilities

This state permit establishes the specific requirements applicable to the permittee for the term of this state permit. The permittee is responsible for compliance with this state permit. The permittee shall implement and update the MS4 Program Plan (as set forth in Part I.B) to ensure compliance with this state permit. The Department has determined that implementation of the MS4 Program Plan reduces the discharge of pollutants to the maximum extent practicable. Where wasteloads have been allocated for pollutant(s) of concern in an approved Total Maximum Daily Load (TMDL), the permittee shall implement the special conditions as set forth in Part I.D of this state permit. Compliance with the requirements of this state permit shall also constitute adequate progress for this permit term towards complying with the assumptions and requirements of the applicable TMDL wasteload allocations such that the discharge does not cause or contribute to violations of the water quality standards.

The permittee shall clearly define the roles and responsibilities of each of the permittee's departments, divisions or subdivisions in maintaining permit compliance. If the permittee relies on another party to implement portions of the MS4 Program Plan, both parties must document the agreement in writing. The agreement shall be retained by the permittee with the MS4 Program Plan. Roles and responsibilities shall be updated as necessary. Where the permittee relies on another party to implement a portion of this state permit, responsibility for compliance with this state permit shall remain with the permittee.

In the event the permittee is unable to meet conditions of this state permit due to circumstances beyond the permittee's control, a written explanation of the circumstances that prevented permit compliance shall be submitted to the Department in the annual report. Circumstances beyond the permittee's control may include abnormal climatic conditions; weather conditions that make certain requirements unsafe or impracticable; or unavoidable equipment failures caused by weather conditions or other conditions beyond the reasonable control of the permittee (operator error and failure to properly maintain equipment are not conditions beyond the control of the permittee). The failure to provide adequate program funding, staffing or equipment maintenance shall not be an acceptable explanation for failure to meet permit conditions. The Board will determine, at its sole discretion, whether the reported information will result in an enforcement action. In addition, the permittee must report noncompliance which may adversely affect surface waters or endanger public health in accordance with Part II.I.

SPECIFIC REPORTING REQUIREMENTS:

- Each annual report shall include a current list of roles and responsibilities.
- Each annual report shall include a list of those circumstances of non-compliance outside of the permittee's control.

3. **Legal Authority**

The permittee shall maintain and utilize its legal authority authorized by the Commonwealth of Virginia to control discharges to and from the MS4 in the manner established by the specific requirements of this state permit. The legal authority shall enable the permittee to:

- a) Control the contribution of pollutants to the MS4;
- b) Prohibit illicit discharges to the MS4;
- c) Control the discharge of spills and the dumping or disposal of materials other than stormwater (e.g. industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the MS4;
- d) Require compliance with conditions in ordinances, permits, contracts, inter-jurisdictional agreements, or orders; and
- e) Carry out all inspections, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the MS4.

The permittee shall review and update its ordinances and other legal authorities such as permits, orders, contracts, and inter-jurisdictional agreements as necessary to continue providing adequate legal authority to control discharges to and from the MS4.

4. **MS4 Program Resources**

The permittee shall submit to the Department a copy of each fiscal year's budget including its proposed capital and operation and maintenance expenditures necessary to accomplish the activities required by this state permit. The permittee shall describe its method of funding the stormwater program with the copy of the fiscal year budget.

SPECIFIC REPORTING REQUIREMENTS:

- A copy of the fiscal year's budget including its proposed capital and operation and maintenance expenditures necessary to accomplish the activities required by this state permit shall be submitted with each annual report.

5. **Permit Maintenance Fees**

Permit maintenance fees shall be paid in accordance with Part XIII of the VSMP regulations (9 VAC 25-870-700 et seq.).

SPECIFIC REPORTING REQUIREMENTS:

- A statement regarding payment of the applicable MS4 permit maintenance fee, including check date and check number shall be included with each annual report. Note: Please do not include

copies of checks or other bank records.

6. MS4 Program Plan

The permittee shall maintain, implement and enforce an MS4 Program Plan accurately documenting the MS4 Program including all additions, changes and modifications. For the purposes of this state permit, the MS4 Program Plan is considered a single document, but may actually consist of separate documents (e.g., dry weather screening plans, wet weather monitoring plans, TMDL Action Plans, annual reports). Policies, ordinances, strategies, checklists, watershed plans and other documents may be incorporated by reference provided the latest revision date is included in the MS4 Program Plan and all documents are available upon request. Specific reference shall be made to any ordinance more stringent than the Virginia Stormwater Management Act (§ 62.1-44.15:24 et. seq.) and VSMP regulations (9 VAC 25-870 et. seq.), the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et. seq.) and Regulations (9 VAC 25-840 et. seq.) and the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 25-830 et. seq.). The MS4 Program Plan is an enforceable part of this state permit.

Updates to the MS4 Program Plan shall be submitted to the Department for review and approval in accordance with the due dates established by this state permit. Updates to the MS4 Program Plan shall become effective and enforceable upon written approval from the Department.

The most recent MS4 Program Plan shall be posted on the permittee's website, or provided in another location easily accessible to the public.

SPECIFIC REPORTING REQUIREMENTS:

- Utilizing the last annual report prior to this state permit effective date as a baseline, the permittee's first annual report submitted under this state permit (Initial Report) shall include the necessary updates to describe implementation of this MS4 Program Plan and meet the conditions described in this section.
- NOTE:** For purposes of the next permit cycle, the fourth annual report submitted under this state permit will be considered the updated MS4 Program Plan to be reviewed as part of permit reissuance.

7. MS4 Program Review and Updates

MS4 Program Review: The permittee will review the current MS4 Program Plan annually, in conjunction with the preparation of the annual report required under Part I.E of this state permit.

a) **MS4 Program Updates and Modifications:**

Modifications to the MS4 Program Plan are expected throughout the life of this state permit as part of the iterative process to reduce pollutant loading and protect water quality. As such, modifications made in accordance with this state permit as a result of the iterative process do not require modification of this state permit unless the Department determines the changes meet the criteria referenced in 9 VAC 25-870-630 or 9 VAC 25-870-650.

Updates and modifications to the MS4 Program Plan may be made during the life of the permit in accordance with the following procedures:

- Adding (but not eliminating or replacing) components, controls, or requirements to the MS4 Program Plan may be made by the permittee at any time. Additions shall be reported as part of

the annual report.

- 2) Updates and modifications to specific standards and specifications, schedules, operating procedures, ordinances, manuals, checklists and other documents routinely evaluated and modified are authorized under this state permit provided that the updates and modifications are performed in a manner (i) that is consistent with the conditions of this state permit, (ii) that ensure public notice and participation requirements established in this state permit are followed, and (iii) that the updates and modifications are documented in the annual report.
- 3) Replacing, or eliminating without replacement, any ineffective or infeasible strategies, policies and Best Management Practices (BMPs) specifically identified in this state permit with alternate strategies, policies and BMPs may be requested at any time. Such requests shall include the following:
 - (a) An analysis of how and /or why the BMPs, strategies, or policies are ineffective or infeasible including information on whether the BMPs, strategies, or policies are cost prohibitive;
 - (b) Expectations on the effectiveness of the replacement BMPs, strategies or policies;
 - (c) An analysis of how the replacement BMPs are expected to achieve the goals of the BMPs to be replaced;
 - (d) A schedule for implementing the replacement BMPs, strategies and policies; and
 - (e) An analysis of how the replacement strategies and policies are expected to improve the permittee's ability to meet the goals of the strategies and policies being replaced.

Requests or notifications shall be made in writing to the Department and signed in accordance with 9 VAC 25-870-370 of the VSMP regulations. Modification to the MS4 Program Plan shall become effective and enforceable upon written approval from the Department. Major modifications to the MS4 Program Plan as defined in 9 VAC 25-870-10 may require that the permit be reopened and modified pursuant to 9 VAC 25-870-630.

b) ***MS4 Program Updates Requested by the Department:***

In a manner and following procedures in accordance with the Virginia Administrative Processes Act, the VSMP regulations and other applicable State laws, statutes and regulations, the Department may request changes to the MS4 Program to assure compliance with the statutory requirements of the Virginia Stormwater Management Act and associated regulations and to:

- 1) Address impacts on receiving water quality caused by discharges from the MS4;
- 2) Include more stringent requirements necessary to comply with new State or Federal statutory or regulatory requirements; or
- 3) Include such other conditions necessary to comply with State or Federal statutory or regulatory requirements.

Proposed changes requested by the Department shall be made in writing and set forth the basis for and objective of the modification as well as the proposed time schedule for the permittee to develop and implement the modification. The permittee may propose alternative program modifications and/or time schedules to meet the objective of the requested modification, but any such modifications are at the discretion of the Department.

SPECIFIC REPORTING REQUIREMENTS:

- All modifications and proposed modifications shall be reported in accordance with this section of the permit.

B. STORMWATER MANAGEMENT

The following subparts describe the requirements for the permittee to implement in its MS4 Program Plan during this state permit term:

1. Planning

No later than 12-months after the effective date of this state permit, the permittee shall submit to the Department a summary of potential stormwater management projects to be completed during the term of the permit. Projects addressing stormwater quantity may be included if there is a water quality benefit to the project. At a minimum, the permittee shall consider the following for each project in the summary: type of project or BMP, number of acres which the BMP treats, impervious and pervious acreage treated by the potential project, condition of the downstream channel, amount of total pollutant reduction, feasibility for implementation, and estimated cost of implementation. The summary shall include a prioritized list of the identified projects for consideration of implementation.

The permittee shall seek public participation in identifying potential stormwater management projects for completion. A copy of the summary shall be placed on the permittee's website no later than 30 days after it is submitted to the Department. Project statuses shall be updated on the website no less than once per year.

SPECIFIC REPORTING REQUIREMENTS:

- No later than 12 months after the permit effective date, the permittee shall provide the stormwater management project summary as described in Part I.B.1.
- The permittee shall provide a current web link to the analysis no later than 12 months after the effective date of this state permit with each annual report.

2. MS4 Program Implementation

a) *Construction Site Runoff and Post Construction Runoff from Areas of New Development and Development on Prior Developed Lands*

- 1) The permittee shall implement a local erosion and sediment control program consistent with the Virginia Erosion and Sediment Control Law § 62.1-44.15:51 of the Code of Virginia and Virginia Erosion and Sediment Control Regulations 9 VAC 25-840 et seq. and a stormwater management program consistent with the Virginia Stormwater Management Act § 62.1-44.15:24 of the Code of Virginia and Virginia Stormwater Management Program Regulations 9 VAC 25-870 et seq.
- 2) The permittee shall identify in the MS4 Program Plan all legal authorities for erosion and sediment control and stormwater management that are more stringent than those required under 9 VAC 25-840 et seq. and/or 9 VAC 25-870 et seq. that have been adopted in accordance with § 62.1-44.15:65 and/or § 62.1-44.15:33 of the Code of Virginia.

SPECIFIC REPORTING REQUIREMENTS:

- Each annual report shall contain the number of regulated land disturbing activities approved and the total number of acres disturbed.

- Each annual report shall contain the number of land disturbing activity inspections conducted and the number and type of each enforcement action taken.
- The initial annual report shall include the permittee's strategy to address maintenance of stormwater management controls that are designed to treat stormwater runoff solely from the individual residential lot on which they are located.
- The initial annual report shall include a list of all known land disturbing projects that qualify under the 'Grandfathering' provision of the VSMP regulations found at 9 VAC 25-870-48.
- Each annual report shall include a summary of actions taken by the permittee to implement Part I.B.2.a)1) and 2) of this state permit.

b) Retrofitting on Prior Developed Lands

From the stormwater management projects included in the summary required in Part I.B.1, the permittee shall complete no less than seven (7) projects no later than the expiration date of this state permit. Projects implemented to meet the requirements of Part I.D of this state permit (TMDL Action Plan and Implementation for the Chesapeake Bay Special Condition or TMDL Action Plans other than the Chesapeake Bay TMDL) may be used to meet the requirements of this special condition.

For retrofit projects that do not serve to meet the requirements of Part I.D, the permittee shall submit a summary of projects implemented during the reporting period with each annual report including type of land use being retrofitted, retrofit performed, completion date or anticipated completion date, total acreage retrofitted, total impervious and pervious acreage, and location by latitude and longitude (in decimal degrees).

SPECIFIC REPORTING REQUIREMENTS:

- Each annual report shall include a status update for those projects for which implementation began during the reporting period.
- c) **Roadways** Streets, roads, and parking lots maintained by the permittee shall continue to be operated and maintained in a manner to minimize discharge of pollutants, including those pollutants related to deicing or sanding activities.
- 1) No later than 12-months after the effective date of this state permit, the permittee shall develop and maintain an accurate list of permittee maintained roads, streets, and parking lots that includes the street name, the miles of roadway not treated by BMPs, and miles of roadway treated with BMPs.
 - 2) No later than 36-months after the effective date of this state permit, the permittee shall develop and implement written protocols for permittee maintained road, street, and parking lot maintenance, equipment maintenance, and material storage designed to minimize pollutant discharge.
 - 3) Materials utilized for deicing and sanding activities shall remain covered from precipitation until application.
 - 4) The permittee shall not apply any deicing agent containing urea or other forms of nitrogen or phosphorus to parking lots, roadways, and sidewalks or other paved surfaces.

SPECIFIC REPORTING REQUIREMENTS:

- The permittee shall include a copy of the written protocols identified in Part I.B.2.c)(2) with the next annual report that is due after development of the protocols.

- d) ***Pesticide, Herbicide, and Fertilizer Application*** The permittee shall continue to control the discharge of pollutants related to the storage and application of pesticides, herbicides, and fertilizers applied to permittee rights of way, parks, and other permittee property, as follows:
- 1) The permittee shall develop and implement turf and landscape nutrient management plans that have been developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia on all lands owned or operated by the MS4 permittee where nutrients are applied to a contiguous area greater than one acre in accordance with the following schedule:
 - (a) No later than 12-months after the effective date of this state permit the permittee shall identify all permittee lands where nutrients are applied to a contiguous area of more than one acre. A latitude and longitude shall be provided for each such piece of permittee land.
 - (b) The permittee shall develop and implement turf and landscape nutrient management plans on all permittee lands where nutrients are applied to a contiguous area of more than one acre. The following measurable goals are established for the development and implementation of turf and landscape nutrient management plans.
 - (1) No later than 24-months after the effective date of this state permit, not less than 15% of all identified acres will be covered by turf and landscape nutrient management plans.
 - (2) No later than 36-months after the effective date of this state permit, not less than 40% of all identified acres will be covered by turf and landscape nutrient management plans.
 - (3) No later than 48-months after the effective date of this state permit, not less than 75% of all identified acres will be covered by turf and landscape nutrient management plans.
 - (c) The permittee shall annually track the following:
 - (1) The total acreage of permittee lands upon which nutrients are applied and controlled using general City guidelines or standard operating procedures;
 - (2) The acreage of permittee lands where turf and landscape nutrient management plans are required; and
 - (3) The acreage of permittee lands covered by turf and landscape nutrient management plans have been implemented.
 - 2) The permittee shall continue to employ good housekeeping/pollution prevention measures in the application, storage, transport and disposal of pesticides, herbicides and fertilizers.
 - 3) The permittee may regulate the use, application, or storage of fertilizers pursuant to §3.2-3602 of the Code of Virginia.
 - 4) The permittee shall track the acreage of permittee lands managed under Integrated Pest Management Plans.

SPECIFIC REPORTING REQUIREMENTS:

- The initial report shall contain a list of all permittee lands and applicable acreage on which nutrients are applied to more than one contiguous acre.
 - Each annual report shall report on compliance with the turf and landscape nutrient management plan implementation schedule and include a list of the permittee's properties for which turf and landscape nutrient management plans have been implemented during the reporting year and the cumulative total of acreage under turf and landscape nutrient management plans.
 - Each annual report shall include the number of acres managed under Integrated Pest Management Plans.
- e) ***Illicit Discharges and Improper Disposal*** Discharges to the MS4 not authorized by this state permit shall be effectively prohibited.
- 1) In accordance with Part I.A.1.b), certain non-stormwater discharges to the MS4 need not be addressed as illicit discharges or improper disposal. The MS4 Program Plan shall identify any non-stormwater discharges listed under Part I.A.1.b), where the permittee has imposed any conditions on the discharges to the MS4. The permittee shall prohibit, on a case-by-case basis, any individual non-stormwater discharge (or class of non-stormwater discharges) otherwise allowed under this paragraph that is determined to be contributing significant amounts of pollutants to the MS4.
 - 2) The permittee shall continue implementing a sanitary sewer inspection program to minimize the exfiltration from the sanitary system to the MS4.

The permittee shall inspect a minimum of 55,000 linear feet of sanitary sewer annually.

The permittee shall coordinate when necessary with the Hampton Roads Sanitation District (HRSD) to identify areas of exfiltration from the sanitary sewer system into the MS4 including maintenance and repair needs.
 - 3) The permittee shall develop and implement a program to reduce the discharge of floatables (e.g. litter and other human-generated solid refuse).
 - 4) The permittee shall prohibit the dumping or disposal of used motor vehicle fluids, household hazardous wastes, sanitary sewage, grass clippings, leaf litter, and animal wastes into the MS4. The permittee shall ensure the implementation of programs to collect used motor vehicle fluids (such as oil and antifreeze) and household hazardous waste materials for recycling, reuse, or proper disposal. Such programs shall be readily available to all private residents and shall be publicized and promoted on a regular basis not less than twice per year.
 - 5) The permittee shall continue to implement a program to locate and eliminate illicit discharges and improper disposal into the MS4. This program shall include dry weather screening activities to locate portions of the MS4 with suspected illicit discharges and improper disposal, as described in Part I.B.2.I)(1) of this state permit.
 - 6) The permittee shall require the elimination of illicit discharges and improper disposal practices within 30-days of discovery. Where elimination of an illicit discharge within 30-days is not possible, the permittee shall require an expeditious schedule for removal of the discharge. In the interim, the permittee shall require the operator of the illicit discharge to take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4.

SPECIFIC REPORTING REQUIREMENTS:

- Each annual report shall include a list of illicit discharges identified, the source, a description of follow-up activities and whether the illicit discharge has been eliminated.
- Each annual report shall include the amount of linear feet of sanitary sewer inspected during the reporting year.
- The initial annual report shall include a description of the procedures the permittee will implement to reduce floatables as required by Part I.B.2.e)3) including procedures to determine the floatables reduction program effectiveness.
- Each annual report following the initial annual report shall include a list of site surveyed for floatables, a summary of observations at each site, and a determination as to the effectiveness of the floatables reduction program.

- f) **Spill Prevention and Response** The permittee shall continue to implement a program that coordinates with the Fire Department and other City Departments to prevent, contain, and respond to spills that may discharge into the MS4. The spill response program may include a combination of spill response actions by the permittee (and/or another public or private entity), and legal requirements for private entities within the permittee's jurisdiction.

SPECIFIC REPORTING REQUIREMENTS:

- Each annual report shall include a list of spills, the source (to the best of the permittee's ability), and a description of follow-up activities taken.

- g) **Industrial & High Risk Runoff** The permittee shall implement a program to identify and control pollutants in stormwater discharges to the MS4 from industrial and high risk runoff facilities (e.g., municipal landfills; other treatment, storage, or disposal facilities for municipal waste; hazardous waste treatment, storage, disposal and recovery facilities; facilities that are subject to EPCRA Title III, Section 313) and any other industrial or commercial discharges the permittee determines are contributing a significant pollutant loading to the MS4.

- 1) The permittee shall maintain, and update as necessary, a list of all known industrial and high-risk dischargers to the MS4. This list shall include VPDES industrial stormwater permits.
- 2) No later than 12-months after the effective date of this state permit, the permittee shall develop and implement a prioritized schedule and procedure to inspect outfalls of facilities with VPDES industrial stormwater permits at the point of connection to the MS4. Prioritization may be based on historical discharges, local water quality impairments, industrial category or other methods selected by the permittee. The permittee shall inspect all VPDES industrial stormwater permitted outfalls connected to its MS4 a minimum of once every five years.
- 3) The permittee shall review copies of discharge monitoring reports (DMRs) submitted to the permittee by VPDES industrial stormwater permitted facilities as part of the permittee's investigations of significant pollutant loadings. The permittee may conduct additional monitoring, or may require the facility to conduct additional monitoring, of any stormwater discharges it believes may be a source of significant pollutant loadings.
- 4) The permittee shall coordinate with the Department to report any non-VPDES permitted industrial facility from which the permittee has evidence that a significant pollutant load is entering the MS4 system. Inspections of facilities for which the permittee has evidence of significant pollutant loading may be carried out in conjunction with other permittee programs.

5) The permittee shall refer the following facilities to the Department of Environmental Quality, Tidewater Regional Office, for Department compliance review under the Virginia State Water Control Law:

- (a) Facilities and operations having non-stormwater discharges that do not have coverage under an existing VPDES permit.
- (b) Facilities and operations identified pursuant to 40 CFR Part 122.26(b)(14) with manufacturing, processing, or raw materials storage outside that do not have coverage under an existing VPDES industrial stormwater permit.
- (c) Any VPDES industrial stormwater permit facility where there is evidence of significant pollutant loadings to the MS4.
- (d) Facilities that do not submit signed copies of DMRs to the permittee as required under a VPDES industrial stormwater permit.

6) The permittee shall maintain a list of any industrial and/or commercial stormwater dischargers not regulated under the Virginia State Water Control Law that it determines may be contributing a significant pollutant loading to the MS4. This list may be individual discharges or categories of discharges.

- (a) Outfalls from these facilities shall be included in the prioritized inspection schedule.
- (b) The list shall include, but shall not be limited to, major automotive facilities such as repair shops, body shops, auto detailers, tire repair shops and service stations.
- (c) The permittee shall require control measures as necessary and/or appropriate for stormwater discharges from these dischargers.

SPECIFIC REPORTING REQUIREMENTS:

- The initial annual report shall include a list of all known industrial and high risk dischargers including any non-VPDES regulated industrial and commercial stormwater dischargers determined by the permittee as contributing a significant pollutant load and that discharge to the MS4 system, a schedule of inspections and procedures for inspecting outfalls.
- Each annual report shall report on implementation of the inspection schedule and include a list of the facilities and/or facility outfalls inspected during the reporting period.
- Each annual report shall include a list of referrals to the Department.

h) **Stormwater Infrastructure Management** The permittee shall continue implement programs to maintain the permittee's stormwater infrastructure and to update the accuracy and inventory of the storm sewer system.

1) For stormwater management (SWM) facilities and infrastructure maintained by the permittee including residential properties where SWM facilities, BMP and Storm Drainage Systems qualify for permittee maintenance (excluding apartments and mobile home parks), the following conditions apply:

- (a) The permittee shall provide for adequate long-term operation and maintenance of SWM facilities owned or operated by the permittee in accordance with written inspection and maintenance procedures included in the MS4 Program Plan.

- 17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
- (b) The permittee shall, at a minimum, inspect annually all SWM facilities owned or operated by the permittee. The permittee may choose to implement an alternative schedule to inspect these SWM facilities based on a risk assessment that includes facility type and expected maintenance needs provided that the alternative schedule is included in the MS4 Program Plan in accordance with plan modifications as listed in Part I.A.7 of this state permit.
 - (c) The permittee shall conduct maintenance on SWM facilities owned or operated by the permittee as necessary.
 - (d) The permittee shall continue its storm sewer system inspection program and shall inspect no less than 15% of the MS4 annually and 100% of the system prior to the expiration of the permit such that all MS4 structures are inspected at least once.
 - (e) The permittee shall dispose of all wastes and wastewaters collected during stormwater system cleaning in accordance with local, state, and federal laws and regulations.
 - (f) The permittee shall obtain any required state or federal permit(s) necessary to complete maintenance activities.
- 2) For SWM facilities not maintained by the permittee and that discharge into the MS4, the following conditions apply:
- (a) The permittee shall continue to implement a program to ensure proper maintenance of each privately maintained SWM facility that discharges into the MS4 system as documented in the MS4 Program Plan.
 - (1) Beginning with the effective date of this state permit and in accordance with 9 VAC 25-870-112 B., maintenance agreements may be used but are not required for stormwater control measures that are designed to treat stormwater runoff solely from the individual residential lot on which they are located provided that the permittee has developed and implemented a strategy to address maintenance of such stormwater management controls. Should the permittee choose a strategy other than a maintenance agreement, such a strategy shall be provided in writing no later than 12 months after the effective date of this state permit and shall include periodic inspections, homeowner outreach and education, or other methods targeted at promoting the long term maintenance of such facilities.
 - (2) For SWM facilities that are privately maintained and for which maintenance agreements have been established between the permittee and the owner, the permittee shall inspect all privately maintained facilities no less than once per 5 years and conduct follow up activities to ensure the required maintenance has been completed. Inspections may be conducted by the permittee or their designee as defined in 9 VAC 25-870-114.
 - (3) For SWM facilities that are privately maintained and for which maintenance agreements have not been established between the permittee and the owner, the permittee shall implement a pilot program consisting of the following:
 - (i) No later than 12-months after the effective date of the permit, the permittee shall develop draft procedures and policies that are designed to ensure that inspection and maintenance of privately maintained SWM facilities without maintenance agreements are being conducted. The draft procedures and policies should identify any expected limitations to the permittee's ability to implement these procedures and policies and should propose options to overcome these

limitations;

- (ii) No later than 15-months after the effective date of the permit, the permittee shall implement these draft procedures and policies including the proposed options identified in subsection Part I.B.2.h)2)a)(3)(i) above; and,
- (iii) No later than 36-months after the effective date of the permit, the permittee shall modify the draft policy and procedures required by Part I.B.2.h)2)a)(3)(i) for the inspection of privately maintained SWM facilities based on the findings of Part I.B.2.h)2)a)(3)(ii) and finalize the inspection procedures.
- 3) No later than 18 months after the effective date of this permit, the permittee shall map the MS4 service area and each MS4 outfall. The following information shall be tracked for each MS4 outfall:
- (a) An individual identification number, local watershed, sixth order HUC, and receiving water;
 - (b) The latitude and longitude in decimal degrees; and
 - (c) New outfalls shall be tracked upon their inclusion into the MS4.
- 4) No later than 24 months after the effective date of this state permit, the permittee shall identify the following for each local watershed, sixth order HUC and Chesapeake Bay Segment:
- (a) The number of impervious, pervious and total acres served by the MS4 as of June 30, 2009; and
 - (b) The number of impervious, pervious and total acres treated by stormwater controls as of June 30, 2009.
- 5) No later than 54 months after the effective of this state permit, the permittee shall update each of the following:
- (a) The number of impervious, pervious and total acres served by the MS4 for each City of Newport News local watershed, sixth order HUC, and Chesapeake Bay segment.
 - (b) The number of impervious, pervious and total acres treated by stormwater controls.

SPECIFIC REPORTING REQUIREMENTS:

- The permittee shall submit with the initial annual report the written inspection and maintenance procedures.
- Each annual report shall include a list of activities including inspections, maintenance, and repair of stormwater infrastructure operated by the permittee as required in Part I.B.2.h)1), including the total number of stormwater facilities operated by the permittee, the type and number of stormwater facilities inspected and maintained; the total linear feet of storm sewer system owned and/or operated by the permittee; and the linear feet of storm sewer system inspected.
- Each annual report shall provide a summary of actions taken by the permittee to address failure of privately maintained SWM facilities owners to abide by maintenance agreements.
- Each annual report shall include a list of activities including inspections performed and notifications of needed maintenance and repair of stormwater facilities not operated by the permittee as required by Part I.B.2.h)2).
- The MS4 service area map including outfalls and information included in Part I.B.2.h)3) shall

be submitted no later than 18 months after the effective date of this state permit. The information shall be submitted as an electronic file in one of the following formats: shapefile, geodatabase, .xls, .xlsx, .csv, mdx, .dbf, delimited text, XML, or other file approved by the Department.

- The second annual report submitted under this state permit shall include the information included in Part I.B.2.h)4). The information shall be submitted in a format specified by the Department.
- The fourth annual report shall include an updated list of all information requested in Part 1.B.2.h)5).

i) **City Facilities** Facilities owned or operated by the permittee shall be operated and maintained as follows:

1) Good Housekeeping

- (a) The discharge of permittee vehicle wash water into the MS4 at permittee facilities without authorization from a separate VPDES permit shall be prohibited.
- (b) The discharge of wastewater into the MS4 at permittee facilities without authorization by a separate VPDES permit shall be prohibited.
- (c) The dumping of collected yard waste and grass clippings into the MS4 shall be prohibited.
- (d) Fluids leaked from municipal vehicles shall be prevented from entering the storm sewer system. Leaked fluids shall be cleaned up and disposed of properly, as soon as possible but no later than 24-hours after discovery.
- (e) No later than the expiration date of this state permit, the permittee shall install and maintain markings on all stormwater inlets located on high priority municipal facilities, as defined at Part I.F, and on permittee properties with greater than 2-acres of impervious surface.

2) High Priority Municipal Facilities

- (a) No later than 12-months after the effective date of this state permit, the permittee shall identify all high priority municipal facilities that do not require a separate VPDES industrial stormwater permit.
- (b) Within 12 months of state permit coverage, the operator shall identify which of the municipal high-priority facilities have a high potential of discharging pollutants. Municipal high-priority facilities that have a high potential for discharging pollutants are those facilities identified in subsection (a) above that are not covered under a separate VPDES permit and which any of the following materials or activities occur and are expected to have exposure to stormwater resulting from rain, snow, snowmelt or runoff:
 - (1) Areas where residuals from using, storing or cleaning machinery or equipment remain and are exposed to stormwater;
 - (2) Materials or residuals on the ground or in stormwater inlets from spills or leaks;
 - (3) Material handling equipment (except adequately maintained vehicles);
 - (4) Materials or products that would be expected to be mobilized in stormwater runoff

- 79 during loading/unloading or transporting activities (e.g., rock, salt, fill dirt);
80
81 (5) Materials or products stored outdoors (except final products intended for outside use
82 where exposure to stormwater does not result in the discharge of pollutants);
83
84 (6) Materials or products that would be expected to be mobilized in stormwater runoff
85 contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar
86 containers;
87
88 (7) Waste material except waste in covered, non-leaking containers (e.g., dumpsters);
89
90 (8) Application or disposal of process wastewater (unless otherwise permitted); or
91
92 (9) Particulate matter or visible deposits of residuals from roof stacks, vents or both not
93 otherwise regulated (i.e., under an air quality control permit) and evident in the
94 stormwater runoff.
95
96 (c) The permittee shall develop and/or update and implement individual stormwater pollution
97 prevention plans for each high-priority municipal facility identified under Part I.B.2.i)2)(a) no
98 later than 36-months after the effective date of this state permit. Stormwater pollution
99 prevention plans (SWPPP) shall include:
00
01 (1) A site description that includes a site map identifying all outfalls, direction of flows,
02 existing source controls and receiving water bodies;
03
04 (2) A discussion and checklist of potential pollutants and pollutant sources;
05
06 (3) A discussion of all potential non-stormwater discharges;
07
08 (4) A maintenance schedule for all existing source controls;
09
10 (5) All policies and procedures implemented at the facility to ensure source reduction;
11
12 (6) An inspection schedule and checklist to ensure that all source reductions are
13 continually implemented and all source controls are appropriately maintained. The
14 date of each inspection and associated findings and follow-up shall be logged in each
15 SWPPP;
16
17 (7) Appropriate training as required in Part I.B.2.k);
18
19 (8) Procedures to conduct an annual comprehensive site compliance evaluation;
20
21 (9) Procedures to conduct dry weather screening; and
22
23 (10) All modifications made as the result of any release or spill.
24
25 (d) A copy of each SWPPP shall be kept at each high-priority municipal facility and be kept
26 updated.
27

28 **SPECIFIC REPORTING REQUIREMENTS:**
29

- 30 • **The initial annual report shall include a list of all high priority municipal facilities.**
31
32

- j) **Public Education/Participation** The permittee shall implement a public education program with the goal of increasing the stormwater knowledge of target audiences and changing behavior to result in pollutant reductions. The permittee may fulfill all or part of the requirements of this state permit through regional outreach programs involving two or more MS4 localities.
- 1) The permittee shall identify, schedule, implement, evaluate and modify, as necessary, public outreach activities designed to meet the following public education and outreach goals:
 - (a) Promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials into the MS4;
 - (b) Continue to promote individual and group involvement in local water quality improvement initiatives including the promotion of local restoration and clean-up projects, programs, groups, meetings and other opportunities for public involvement;
 - (c) Develop an outreach program for public and private golf courses located within the City which discharge to the permittee's MS4 that encourages implementation of integrated management practice (IMP) plans and techniques to reduce runoff of fertilizer and pesticides;
 - (d) Promote, publicize, and facilitate the proper management and disposal of used oil and household hazardous wastes;
 - (e) Promote and publicize the proper disposal of pet waste and household yard waste;
 - (f) Promote and publicize the use of the City's litter prevention program;
 - (g) Promote and publicize methods for residential car washing that minimize water quality impacts;
 - (h) Promote and publicize the proper use, application, and disposal of pesticides, herbicides, and fertilizers by public, commercial, and private applicators and distributors;
 - (i) Encourage private property owners to implement voluntary stormwater management techniques and/or retrofits; and
 - (j) Target strategies towards local groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts.
 - 2) The permittee shall post a copy of this state permit on its web page no later than 30-days after the effective date of this state permit and continue to retain a copy of the permit online for the duration of this state permit.
 - 3) The permittee shall post copies of each annual report on its website no later than 30 days after the report submittal to the Department and continue to retain copies of the annual reports online for the duration of this state permit.
 - 4) The permittee shall post the most current MS4 Program Plan on its website no later than 30 days after the effective date of this permit and maintain a current copy on the website. If the MS4 Program Plan is modified or revised, the updated plan shall be posted within 30 days of the revision(s). Copies of the most current MS4 Program Plan shall be made available for public review upon request of interested parties in compliance with all applicable open records requirements.

SPECIFIC REPORTING REQUIREMENTS:

- Each annual report shall include a list of permittee public outreach and education activities and the estimated number of individuals reached through the activities. An evaluation of program effectiveness, as outlined in the MS4 Program Plan with recommendations for future changes shall also be included.
- Each annual report shall provide a summary of voluntary retrofits completed on private property used to demonstrate pollutant reduction requirements. Note that any voluntary project for which the permittee seeks to use for pollutant reduction requirements must be tracked and reported.
- Each annual report shall provide a summary of voluntary stormwater management techniques encouraged on private property.

k) **Training** The permittee shall conduct stormwater training for permittee employees. The training requirement may be fulfilled all or in part through regional training programs involving two or more MS4 localities; provided, however, that the permittee shall remain individually liable for its failure to comply with the training requirements in this state permit. The permittee shall determine the appropriate employees to receive the following types of training based on the specific topic for which training is to be provided:

- 1) The permittee shall provide biennial training to appropriate field personnel in the recognition and reporting of illicit discharges.
- 2) The permittee shall provide biennial training to appropriate employees in good housekeeping and pollution prevention practices that are to be employed during road, street, and parking lot maintenance.
- 3) The permittee shall provide biennial training to appropriate employees in good housekeeping and pollution prevention practices that are to be employed in and around permittee maintenance and public works facilities.
- 4) The permittee shall ensure that employees, and require that contractors, who apply pesticides and herbicides are properly trained or certified per the Virginia Pesticide Control Act (§3.2-3900 et seq. of the Code of Virginia). The requirements of the Virginia Pesticide Control Act are established by the Virginia Pesticide Control Board.
- 5) The permittee shall have a program to ensure that City plan reviewers, inspectors, program administrators and construction site operators (e.g. responsible land disturber) are trained and obtain the appropriate certifications to the extent required under the Virginia Erosion and Sediment Control Law and attendant regulations.
- 6) The permittee shall have a program to ensure that the applicable City employees obtain the appropriate certifications as required under the Virginia Erosion and Sediment Control Law and its attendant regulations to implement the modified stormwater management design criteria.
- 7) The permittee shall provide biennial training to applicable employees in good housekeeping and pollution prevention practices that are to be employed in and around permittee recreation facilities.
- 8) The appropriate emergency response employees shall have training in spill response. A summary of the training or certification program provided to emergency response employees shall be included in the first annual report.

- 9) Documentation shall be kept of all training events including the training date, number of employees attending the training, and the objective of the training event for a period of three years after each training event. Additionally, all events shall be listed in the annual report for the year in which the training event occurred.

SPECIFIC REPORTING REQUIREMENTS:

- Each annual report shall include a list of training events, the date and the estimated number of individuals attending each event.
- The initial report shall include documentation of employee emergency spill response training and/or certification.

- l) **Water Quality Screening Programs** The following screening programs shall be implemented in addition to the monitoring required by Part I.C:

- 1) **Dry Weather Screening Program:** The permittee shall continue ongoing efforts to detect the presence of illicit connections and unauthorized discharges to the permittee's MS4.

- (a) The permittee shall continue to implement a program of dry weather screening in areas of concern as identified by the permittee including but not limited to: commercial car washes, car dealerships, pet kennels, restaurants, areas with a history of complaints, and areas upstream of sensitive ecosystems. The permittee shall screen at a minimum, 100 of the City's MS4 total number of outfalls each year. If an outfall is submerged or tidally influenced then the last known point of discharge that is visible up system and not tidally influenced shall be used to conduct the dry weather screening.

- (b) Criteria for selection of outfalls to be screened as required by Part I.B.2.I)1)(a) above shall include but is not limited to the following:

- (1) List of sites requiring further investigation, as previously identified;
- (2) Age and density of development with the likelihood of illicit connections such as older residential, commercial and industrial areas;
- (3) Outfalls representing the general land uses of the City of Newport News;
- (4) Poorly maintained gas stations, service stations, and shopping centers;
- (5) Presence of environmentally sensitive features downstream; and
- (6) History of complaints received on illicit discharges.

- 2) **Wet Weather Screening Program:** In addition to the monitoring required in Part I.C., the permittee shall continue to investigate, and address areas within their jurisdiction that are suspected to be contributing excessive levels of pollutants to the MS4. No later than 12 months after the effective date of this permit, the permittee shall develop written procedures for a wet weather screening program which shall include the standard operating procedure to be used for initial screening and follow-up purposes.. The written procedures shall be incorporated as part of the MS4 Program Plan.

SPECIFIC REPORTING REQUIREMENTS:

- Each annual report shall include a list of locations upon which dry weather screening was conducted, the results and any follow-up actions including maintenance and/or repair of infrastructure or outfalls performed as a result of the dry weather screening.
- No later than 12 months after the effective date of the state permit, the permittee shall submit to the Department the written procedures for wet weather screening.

- Each annual report shall include a list of locations upon which wet weather screening was conducted, the results, weather conditions at the time sample was collected to include date and approximate time of most recent storm event preceding sample collection, long term trends analyses, and any follow-up actions including maintenance and/or repair of infrastructure or outfalls performed as a result of the wet weather screening.

m) **Infrastructure Coordination** – The permittee shall coordinate with the Virginia Department of Transportation (VDOT) regarding issues of MS4 physical-interconnectivity as described below:

- (1) **Annual Coordination Meeting** – The permittee shall meet annually with VDOT for purposes of overall coordination on priority issues for the permittee's MS4 program plan (including operations and maintenance elements) and TMDL action planning relevant to the interconnectivity of the MS4s.
- (2) **Mapping** – The permittee shall inform VDOT of the status of its mapping program, identifying any uncertainty regarding ownership or actual location of MS4 components associated with the physically-interconnected MS4s, and working to resolve such uncertainty. The permittee shall coordinate with VDOT to identify any areas within the permittee's municipal boundaries that drain to the VDOT MS4.
- (3) **Chesapeake Bay TMDL Action Plans** – The permittee shall inform VDOT of the means, methods, and schedule by which the permittee will implement the reductions required by the Chesapeake Bay TMDL Special Condition (Part I.D.1) when those means and methods may impact the physically-interconnected MS4s. The parties are encouraged to cooperate with one another where the siting or design of best management practices (BMPs) may be accelerated or otherwise improved by mutual cooperation.

The permittee shall coordinate with VDOT to identify any areas within the permittee's municipal boundaries that drain to the VDOT MS4 and are unaccounted for in the Chesapeake Bay TMDL Action Plan developed by VDOT or the permittee. The unaccounted areas shall be quantified (acres) in the Chesapeake Bay TMDL Action Plan submitted by the permittee.
- (4) **Other TMDL Action Plans** – The permittee shall inform VDOT of TMDL Action Plans and major milestones implemented for other (i.e., non-Chesapeake Bay) TMDLs when those plans may impact the physically-interconnected MS4s. The parties are encouraged to cooperate with one another where the siting or design of BMPs may be accelerated or improved by mutual cooperation.
- (5) **Credit for TMDL Implementation** – Permit specific BMP retrofit requirements shall not be double-counted in the calculation of load reductions. If the permittee undertakes the project, the permittee shall be entitled to full credit for the project, but may share credit with VDOT on mutually agreeable terms, which shall be in writing.
- (6) **Illicit Discharge Detection & Elimination** – The permittee shall continue to be responsible for implementing a program for illicit discharge detection and elimination, including dry weather field screening, for the permittee's portion of the physically-interconnected MS4. As part of the annual coordination meeting, described in item (1) above, the permittee shall coordinate with VDOT on the identification of high risk industrial facilities. The permittee shall establish procedures for notifying VDOT when an illicit discharge is identified in the VDOT MS4.
- (7) **Water Quality Monitoring** – The permittee shall conduct water quality monitoring as required by Part I.B.2.I) and Part I.C of this state permit. The permittee shall make available to VDOT all

monitoring data collected from areas where the physically-interconnected MS4 discharges to the VDOT MS4 or received flow from the VDOT MS4. The permittee and VDOT are encouraged to cooperate with one another to establish a joint monitoring network.

- (8) Annual Reports – As part of its Annual Report, the permittee shall document coordination efforts with VDOT that occurred during the reporting year pursuant to requirements (1) through (7) above.

C. MONITORING REQUIREMENTS

1. In-System Monitoring

The permittee shall develop and implement an in-system monitoring program to characterize the stormwater discharged to the MS4, identify pollutants of concern as well as determine the effectiveness of any upstream BMPs as follows:

- a) Two (2) stormwater monitoring sites within the City designated as part of the Hampton Roads Stormwater Monitoring Network shall be selected for monitoring during the term of this permit.
- b) Monitoring shall be conducted, at a minimum of once per quarter between January 1st and December 31st at each monitoring location.
- c) Monitoring shall be performed for the following parameters:
 - 1) pH
 - 2) Dissolved Oxygen
 - 3) Temperature
 - 4) Total Suspended Solids
 - 5) Ammonia as Nitrogen
 - 6) Nitrate plus Nitrite Nitrogen
 - 7) Total Kjeldahl Nitrogen
 - 8) Total Nitrogen (calculated)
 - 9) Dissolved Phosphorus
 - 10) Total Phosphorus
 - 11) *Escherichia Coli*
- d) Monitoring for the parameters listed in Part I.C.1.c) shall be in accordance with Part II.A. of this state permit.
- e) The permittee may replace a sampling location with a new proposed location after 15 samples are collected and analyzed. Written notification of the monitoring plan revisions shall be given to the Department in writing and shall include a statistical analysis of the monitoring results, conclusions regarding the data, the proposed new monitoring location, and the reasoning for site location choice.

SPECIFIC REPORTING REQUIREMENTS:

- The initial annual report shall include the list of sites to be monitored during the term of the state permit and monitoring protocols.
- Each annual report shall include a summary of the monitoring results and analyses and an interpretation of that data with respect to long-term patterns/trends.

03 **2. Structural and Source Controls Compliance Monitoring and Tracking**

- 04
- 05 a) The permittee shall maintain an updated electronic database of all known permittee and privately
- 06 maintained stormwater management (SWM) facilities. The database shall include the following:
- 07
- 08 1) The SWM facility type, address, and latitude, and longitude (in decimal degrees);
- 09
- 10 2) The total pervious and impervious acres treated;
- 11
- 12 3) The date brought online (MMYYYY). If the date is unknown, the permittee shall use June 2005 as
- 13 the date brought online for all previously existing SWM facilities;
- 14
- 15 4) The hydrologic unit code (HUC 6) in which the SWM facility is located;
- 16
- 17 5) The name of any impaired water segments within each HUC listed on the most recent 305(b)/303(d)
- 18 Water Quality Assessment Integrated Report to which the SWM facility discharges;
- 19
- 20 6) Whether the SWM facility is permittee or privately maintained;
- 21
- 22 7) Whether the SWM facility discharges into the permittee's MS4;
- 23
- 24 8) Whether a maintenance agreement exists if the SWM is privately maintained; and
- 25
- 26 9) The date of last inspection by permittee authorities.
- 27

28 All SWM facilities brought online during each reporting year shall be submitted with the appropriate

29 annual report, as an electronic file in one of the following formats: shapefile, geodatabase, .xls, .xlsx,

30 .csv, .mdx, .dbf, delimited text, XML, or other file approved by the Department.

31

32 No later than 36-months of the effective date of this state permit, the list shall be updated to include the

33 required information for SWM facilities known to exist prior to the effective date of this state permit. The

34 updated information shall be submitted with the fourth annual report.

35

- 36 b) Facilities that solely provide peak flow control as required by the City of Newport News Code are
- 37 excluded from the requirements of this section. Inspection and maintenance requirements for these
- 38 facilities shall be in accordance with all applicable state and local ordinances, regulations, and statutes.
- 39

40 **SPECIFIC REPORTING REQUIREMENTS:**

- 41
- 42 • Each annual report shall include a copy of the updated database in electronic format.
 - 43
 - 44 • Each annual report shall include a summary of the program to ensure maintenance of private
 - 45 stormwater management facilities.
 - 46
 - 47 • Each annual report shall include a summary of the program to ensure maintenance of
 - 48 stormwater management facilities maintained by the permittee.
 - 49
 - 50 • The fourth annual report submitted under this permit shall include an updated list of
 - 51 stormwater management facilities existing prior to the effective date of this permit.
 - 52
- 53

54 **D. TMDL ACTION PLAN AND IMPLEMENTATION**

55 **1. Chesapeake Bay Special Condition**

56

The Commonwealth in its Phase I and Phase II Chesapeake Bay TMDL Watershed Implementation Plans (WIP) committed to a phased approach for MS4s permittees to implement necessary reductions. This state permit is consistent with the Chesapeake Bay TMDL and the Virginia Phase I and II WIPs to meet the Level 2 (L2) scoping run for existing developed lands as it represents an implementation of 5% of L2 as specified in the 2010 Phase I WIP. Conditions of future permits will be consistent with the TMDL or WIP conditions in place at the time of permit issuance.

a) Definitions

The following definitions apply to this state permit for the purpose of the Special Condition for Discharges in the Chesapeake Bay Watershed:

- 1) "Existing Sources" means pervious and impervious urban land uses served by the MS4 as of June 30, 2009.
- 2) "New Sources" means pervious and impervious urban land uses served by the MS4 developed or redeveloped on or after July 1, 2009.
- 3) "Transitional Sources" means regulated land disturbing activities which are temporary in nature and discharge through the MS4.
- 4) "Pollutants of concern" or "POC" means total nitrogen, total phosphorus and total suspended solids.

b) Chesapeake Bay Watershed TMDL Planning

- 1) No later than 24-months after the effective date of this state permit, the permittee shall develop and submit to the Department for its review and acceptance an approvable phased Chesapeake Bay TMDL Action Plan that includes:
 - (a) A review of the current MS4 Program Plan including existing legal authorities and the permittee's ability to ensure compliance with this special condition.
 - (b) Identifies any new or modified legal authorities, such as ordinances, permits, orders, contracts and inter-jurisdictional agreements, implemented or needing to be implemented to meet the requirements of this special condition.
 - (c) The means and methods utilized to address discharges into the MS4 from new sources.
 - (d) An estimate of the annual POC loads discharged from the existing sources as of June 30, 2009 based on the 2009 progress run. The permittee shall utilize Table 1 and multiply the total existing acres served by the MS4 on June 30, 2009 and the 2009 Edge of Stream (EOS) Loading Rate.

Table 1: Calculation Sheet for Estimating Existing Source Loads for the James River Basin (Based on Chesapeake Bay Program Watershed Model Phase 5.3.2)				
Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	2009 EOS Loading Rate (lbs/ac/yr)	Estimated Total POC Load Based on 2009 Progress Run (lb/yr)
Regulated Urban Impervious	Nitrogen		9.39	
Regulated Urban Pervious			6.99	

Regulated Urban Impervious	Phosphorus		1.76	
Regulated Urban Pervious			0.5	
Regulated Urban Impervious	Total Suspended Solids		676.94	
Regulated Urban Pervious			101.08	

- (e) A determination of the total pollutant load reductions necessary to reduce the annual POC existing loads using Table 2 by multiplying the *Total Existing Acres served by MS4* by the *First Permit Cycle Required Reduction in Loading Rate*.

Table 2: Calculation Sheet for Determining Total POC Reductions Required During this State Permit Cycle for the James River Basin (Based on Chesapeake Bay Program Watershed Model Phase 5.3.2)				
Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/ac/yr)	Total Reduction Required During First Permit Cycle (lbs/yr)
Regulated Urban Impervious	Nitrogen		0.04	
Regulated Urban Pervious			0.02	
Regulated Urban Impervious	Phosphorus		0.01	
Regulated Urban Pervious			0.002	
Regulated Urban Impervious	Total Suspended Solids		6.67	
Regulated Urban Pervious			0.44	

- (f) The means and methods, such as the management practices and retrofit programs that will be utilized to meet the required reductions identified in Part I.D.1.b)(1)(e) and a schedule to achieve those reductions. The schedule should include annual benchmarks to demonstrate the on-going progress in meeting the reductions.
- (g) The means and methods to offset the increased loads from new sources initiating construction between July 1, 2009 and June 30, 2014 that disturb one acre or greater as a result of the utilization of an average land cover condition greater than 16% impervious cover for the design of post development stormwater management facilities. The permittee shall utilize Table 3 to develop the equivalent pollutant load for nitrogen and total suspended solids. The permittee shall offset 5% of the calculated increased load from these new sources during the permit cycle.
- (h) The means and methods to offset the increased loads from grandfathered projects in accordance with 9 VAC 25-870-48, that disturb one acre or greater that begin construction after July 1, 2014 where the project utilized an average land cover condition greater than 16% impervious cover in the design of post development stormwater management facilities. The permittee shall utilize Table 3 to develop the equivalent pollutant load for nitrogen and total suspended solids.

Table 3: Ratio of Phosphorus Loading Rate to Nitrogen and Total Suspended Solids Loading Rates for Chesapeake Bay Basins (Based on Chesapeake Bay Program Watershed Model Phase 5.3.2)			
<u>Ratio of Phosphorus to Other POCs (Based on All Land Uses 2009 Progress Run)</u>	<u>Phosphorus Loading Rate (lbs/ac/yr)</u>	<u>Nitrogen Loading Rate (lbs/ac/yr)</u>	<u>Total Suspended Solids Loading Rate (lbs/ac/yr)</u>
James River Basin	1.0	5.2	420.9

- (i) A list of future projects and associated acreage that qualify as grandfathered in accordance with 9 VAC 25-870-48.
 - (j) An estimate of the expected cost to implement the necessary reductions during the permit cycle.
 - (k) An opportunity for receipt and consideration of public comment on the draft Chesapeake Bay TMDL Action Plan.
 - (l) A list of all comments received as a result of public comment and any modifications made to the draft Chesapeake Bay TMDL Action Plan as a result of the public comments.
- 2) As part of development of the Chesapeake Bay TMDL Action Plan, the permittee shall consider use of the following:
 - (a) Implementation of BMPs on unregulated lands provided the baseline reduction is subtracted from the total reduction prior to application of the reduction towards meeting the required reductions.
 - (b) Utilization of stream restoration projects provided the baseline reduction from the unregulated acreage treated by the stream restoration project is subtracted from the total reduction prior to application of the reduction towards meeting the required reductions.
 - (c) Establishment of a memorandum of understanding (MOU) with other MS4 permittees that discharge to the same or adjacent eight digit hydrologic unit within the same basin to implement BMPs collectively. The MOU shall include a mechanism for dividing the POC reductions created by BMP implementation between the cooperative MS4s.
 - (d) Utilization of any pollutant trading or offset program in accordance with §62.1-44.19:20 through 62.1-44.19:23 et seq. of the Code of Virginia governing trading and offsetting.
 - (e) A more stringent average land cover condition based on less than 16% impervious cover for new sources initiating construction between July 1, 2009, and June 30, 2014, and all grandfathered projects where allowed by law.
 - (f) Any BMPs installed after June 30, 2009, as part of a retrofit program may be applied towards meeting the required load reductions provided any necessary baseline reductions are not included.
 - 3) The permittee shall address any modification to the TMDL or watershed implementation plan that occurs during the term of this state permit as part of its permit reapplication as required in Part II.M of this state permit.
 - 4) The Chesapeake Bay TMDL Action Plan shall become effective and enforceable upon written approval from the Department.

c) **Chesapeake Bay TMDL Action Plan Implementation**

- 1) The permittee shall implement the TMDL action plan required in Part I.D.1.b)1) of this state permit according to the schedule therein. Compliance with this requirement represents adequate progress for this state permit term towards achieving TMDL wasteload allocations consistent with the assumptions and requirements of the TMDL.
- 2) For the purposes of this state permit, the implementation of the following represents implementation to the maximum extent practicable and demonstrates adequate progress:
 - (a) Implementation of turf and landscape nutrient management plans in accordance Part I.B.2.d);
 - (b) Implementation of construction site runoff controls in Part I.B.2.a) in accordance with this state permit shall address discharges from transitional sources;
 - (c) Implementation of the means and methods to address discharges from new sources in accordance with requirements in Part I.B.2.a) for post-construction runoff from areas of new development and development on prior developed lands to offset 5% of the total increase in POC loads between July 1, 2009 and June 30, 2014 required in Part I.D.1.b)1)(g) and to offset increases in the POC load from grandfathered projects initiating construction after July 1, 2014 prior to completion of the project as required in Part I.D.1.b)1)(h); and
 - (d) Implementation of means and methods sufficient to meet 5% required reductions of POC loads from existing sources defined in this state permit in accordance with the Chesapeake Bay TMDL Watershed Implementation Plan as required in Part I.D.1.b)1)(e).

d) **Annual Reporting Requirements**

- 1) In accordance with Part I D.1.b)1), the permittee shall submit the Chesapeake Bay TMDL Action Plan.
- 2) Each subsequent annual report shall included a list of control measures implemented during the reporting period and the cumulative progress toward meeting the compliance targets for total nitrogen, phosphorus, and total suspended soils.
- 3) Each subsequent annual report shall include a list of control measures that were implemented during the reporting cycle and the estimated reduction achieved by the control. For stormwater management controls, the report shall include the information required in Part I.C.3.a) and shall include whether an existing stormwater management control was retrofitted, and if so, the existing stormwater management control type retrofit used.
- 4) Each annual report shall include a list of control measures that are expected to be implemented during the next reporting period and the expected progress toward meeting the compliance targets for total nitrogen, total phosphorus, and total suspended solids.
- 5) The permittee shall include the following as part of its reapplication package due in accordance with Part II.M:
 - (a) Documentation that sufficient control measures have been implemented (or documentation detailing that implementation will be complete by the expiration date of this state permit) to meet the compliance target identified in this Special Condition. If temporary credits or offsets have been purchased in order to meet the compliance target, the list of temporary reductions utilized to meet

the 5% reduction in this state permit and a schedule of implementation to ensure a permanent 5% reduction shall be provided.

(b) A draft second phase Chesapeake Bay TMDL Action Plan designed to address the following:

- (1) Reduction in the existing POC loads by an additional seven times the required reductions in loading rates using Table 2 of Part I.D.1.b) of this state permit unless alternative calculations have been provided by the Commonwealth;
- (2) Reduction of an additional 35% in increased loads from new sources initiating construction between July 1, 2009 and June 30, 2014 that disturbed one acre or greater as a result of the utilization of an average land cover condition greater than 16% impervious cover for the design of post development stormwater management facilities; and
- (3) Accounting for any modification to the applicable loading rate provided to the permittee as a result of TMDL modification.

2. TMDL Action Plans other than the Chesapeake Bay TMDL

a) TMDL Action Plan Development

The permittee shall maintain an updated MS4 Program Plan that includes TMDL Action Plans for pollutants in which wasteloads have been allocated to the MS4 in approved TMDLs. Approved TMDLs as of the effective date of this state permit are included in Attachment A of this state permit. TMDL Action Plans may be implemented in multiple phases over more than one permit cycle using the adaptive iterative approach provided adequate progress is made to reduce pollutant discharges in a manner that is consistent with the assumptions and requirements of the applicable TMDL. Progress shall be demonstrated by representative and adequate monitoring or other methods (e.g. modeling) as described in Part I.D.2.b)5) below. These TMDL Actions Plans shall identify the best management practices and other interim milestone activities to be implemented during the remaining term of this state permit. The plan shall include an estimated end date for achieving the applicable wasteload allocations and, for planning purposes, a projection of BMPs and other implementation steps expected to address the WLA, outside of the permit term, as applicable.

- 1) No later than 24 months after the effective date of this state permit, the permittee shall submit to the Department TMDL Action Plans to address any new or modified requirements established under this Special Condition for pollutants identified in TMDL wasteload allocations approved prior to the effective date of this state permit.
- 2) The TMDL Action Plans shall become effective and enforceable upon written notification from the Department.
- 3) The TMDL Action Plans shall be incorporated by reference into this state permit.

b) TMDL Action Plan content

The permittee shall:

- 1) Develop and maintain a list of its legal authorities such as ordinances, permits, order, specific contract language, and inter-jurisdictional agreements applicable to reducing the pollutant identified in a WLA;
- 2) Identify and maintain an updated list of all additional management practices, control techniques and system design and engineering methods, beyond those identified in Part I.B of this state permit, that have been implemented as part of the MS4 Program Plan that are applicable to reducing the pollutant identified in the WLA;

- 79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
00
01
02
03
04
05
06
07
08
09
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
- 3) Enhance the public education and outreach and employee training programs to also promote methods to eliminate and reduce discharges of the pollutants identified in the WLA;
 - 4) Assess all significant sources of pollutant(s) from facilities of concern owned or operated by the MS4 operator that are not covered under a separate VPDES industrial stormwater permit and identify all municipal facilities that may be a significant source of the identified pollutant. For the purpose of this assessment, a significant source of pollutant(s) from a facility of concern means a discharge where the expected pollutant loading is greater than the average pollutant loading for the land use identified in the TMDL. (For example, a significant source of pollutant from a facility of concern for a bacterial TMDL would be expected to be greater at a dog park than at other recreational facilities where dogs are prohibited);
 - 5) Develop and implement a method to assess TMDL Action Plans for their effectiveness in reducing the pollutants identified in the WLAs. The evaluation shall use any newly available information, representative and adequate water quality monitoring results, or modeling tools to estimate pollutant reductions for the pollutant(s) of concern from implementation of the MS4 Program Plan. Monitoring may include BMP, outfall, or in-stream monitoring, as appropriate, to estimate pollutant reductions. The permittee may conduct monitoring, utilize existing data, establish partnerships, or collaborate with other MS4 permittees or other third parties, as appropriate. This evaluation shall include assessment of the facilities identified in Part I.D.2.b)4) above. The methodology used for assessment shall be described in the TMDL Action Plan; and
 - 6) Solicit public input on the draft TMDL Action Plan and consider public comments in development of the final TMDL Action Plan that is submitted to the Department for review and approval.
- c) This state permit shall be modified or alternatively revoked and reissued if any approved wasteload allocation procedure, pursuant to Section 303(d) of the Clean Water Act, imposes wasteload allocations, limits or conditions on the treatment works that are not consistent with the permit requirements.
- d) Analytical methods for any monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the Environmental Protection Agency (EPA). Where an approved 40 CFR Part 136 method does not exist, the permittee shall use a method consistent with the TMDL.
- e) The permittee is encouraged to participate as a stakeholder in the development of any TMDL implementation plans applicable to their discharge. The permittee may incorporate applicable best management practices identified in the TMDL implementation plan in the MS4 Program Plan.
- f) Annual Reporting Requirements.
- 1) The permittee shall submit the required TMDL Action Plans to the Department for review and acceptance with the appropriate annual report associated schedule identified in this permit.
 - 2) The permittee shall report on the implementation of the TMDL Action Plans and associated evaluation including the results of any monitoring conducted as part of the evaluation.
- g) The permittee shall identify the best management practices and other steps that will be implemented during the next permit term as part of the permittee's reapplication for coverage as required under Part II.M. The permittee shall also evaluate and modify the estimated end date for achieving the applicable wasteload based on information acquired during the permit cycle.

E. Annual Reporting

The permittee shall submit the annual report to the Department, no later than October 1st of each year. The report shall cover the previous fiscal year from July 1st to June 30th and include the following separate sections:

1. Background Information

- a) The permittee and permit number of the program submitting the annual report;
 - b) Any modifications to the MS4 Program Plan as a result of the annual report;
 - c) The reporting dates for which the annual report is being submitted; and
 - d) Certification as per Part II.K.
2. A summary of the implementation of each of the components established under Part I.B. and an evaluation of the effectiveness of each component. The permittee should attempt to limit any component's narrative summary to no longer than two-pages plus any necessary tables and figures.
 3. A summary report of the monitoring programs listed under Part I.C.
 4. A summary of the implementation of each component listed under Part I.D.
 5. The Specific Reporting Requirements identified in this state permit.

F. Definitions

Definitions contained in the Virginia Stormwater Management Act, Part I (9 VAC 25-870-10) and Federal NPDES rules, 40 CFR Part 122, apply where a definition is not specified below. Unless otherwise specified in this state permit, additional definitions or words or phrases used in this state permit are as follows:

1. "Best management practice" or "BMP" means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.
2. "Board" means the State Water Control Board.
3. "Date brought on line" means the date when the permittee determines that a new stormwater management facility is properly functioning to meet its designed pollutant load reduction.
4. "DEQ" or "Department" means the Department of Environmental Quality.
5. "High priority municipal facility" means any facility owned and operated by the permittee or regulated under this state permit that includes composting facilities, equipment storage and maintenance facilities, materials storage yards, pesticide storage facilities, public works yards, recycling facilities, salt storage facilities, solid waste handling and transfer facilities, and vehicle storage and maintenance yards.
6. "Industrial land use" means land utilized in connection with manufacturing, processing, or raw materials storage at facilities identified under 40 CFR Part 122.26(b)(14).
7. "Maintenance" means maintenance on the MS4 and associated structural stormwater controls including, but not limited to, activities such as inspections of basins and ponds; repair and replacement of failed controls, mowing grass filter strips; regular removal of litter and debris from dry ponds, forebays and water quality inlets; periodic stabilization and revegetation of eroded areas; periodic removal and replacement of filter media from infiltration trenches and filtration ponds; periodic removal of trash and sediment; deep tilling of

infiltration basins to maintain capacity; vacuuming or jet hosing of porous pavement or concrete grid pavements; and, removal of litter and debris from wet weather conveyances.

8. "Permittee" means the City of Newport News.
9. "Physically interconnected" means that one MS4 is connected to a second MS4 in such a manner that it allows for direct discharges to the second system.
10. "Retrofit" means the modification of existing stormwater management facilities, as defined herein, including flood control structures, through construction and/or enhancement in order to address water quality improvements. Retrofit also means the installation or implementation of source reductions to provide water quality improvements on previously developed land where no stormwater source reductions previously existed.

PART II-CONDITIONS APPLICABLE TO ALL VSMP MS4 PERMITS

A. MONITORING

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this state permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.
4. Samples taken as required by this state permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. RECORDS

1. Monitoring records/reports shall include:
 - a) The date, exact place, and time of sampling or measurements;
 - b) The individual(s) who performed the sampling or measurements;
 - c) The date(s) and time(s) analyses were performed;
 - d) The individual(s) who performed the analyses;
 - e) The analytical techniques or methods used; and
 - f) The results of such analyses.
2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; copies of all reports required by this state permit; and records of all data used to complete the registration statement for this state permit, for a period of at least 3 years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as

requested by the Board.

C. REPORTING MONITORING RESULTS

1. The permittee shall submit the results of the monitoring required by this state permit with the annual report unless another reporting schedule is specified elsewhere in this state permit.
2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the Department; or in any format provided that the date, location, parameter, method, and result of the monitoring activity are included.
3. If the permittee monitors any pollutant specifically addressed by this state permit more frequently than required by this state permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this state permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the Department.
4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this state permit.

D. DUTY TO PROVIDE INFORMATION

The permittee shall furnish to the Department, within a reasonable time, any information that the Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this state permit or to determine compliance with this state permit. The Board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from its discharge on the quality of surface waters, or such other information as may be necessary to accomplish the purposes of the Clean Water Act and Virginia Stormwater Management Act. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this state permit.

E. COMPLIANCE SCHEDULE REPORTS

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this state permit shall be submitted no later than 14 days following each schedule date.

F. UNAUTHORIZED STORMWATER DISCHARGES

Pursuant to § 62.1-44.15:26 of the Code of Virginia, except in compliance with a permit issued by the board, it shall be unlawful to cause a stormwater discharge from a MS4.

G. REPORTS OF UNAUTHORIZED DISCHARGES

Any operator of a regulated MS4 who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117 or 40 CFR Part 302 that occurs during a 24-hour period into or upon surface waters; or who discharges or causes or allows a discharge that may reasonably be expected to enter surface waters, shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this state permit.

Discharges reportable to the Department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. REPORTS OF UNUSUAL OR EXTRAORDINARY DISCHARGES

If any unusual or extraordinary discharge including "bypass" or "upset", as defined herein, should occur from a facility and the discharge enters or could be expected to enter surface waters, the permittee shall promptly notify, in no case later than 24 hours, the Department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall produce a written report and submit it to the Department within five days of discovery of the discharge in accordance with Part II.I.2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the facilities; and
4. Flooding or other acts of nature.

I. REPORTS OF NONCOMPLIANCE

The permittee shall report any noncompliance, which may adversely affect surface waters or may endanger public health.

1. An oral report shall be provided within 24 hours to the Department from the time the permittee becomes aware of the circumstances. The following shall be included as information, which shall be reported within 24 hours under this paragraph:
 - a) Any unanticipated bypass; and
 - b) Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within 5 days and shall contain:
 - a) A description of the noncompliance and its cause;
 - b) The period of noncompliance, including exact dates and times, and if the noncompliance has not

49 been corrected, the anticipated time it is expected to continue; and

- 50
51 c) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

52
53 The Board or its designee may waive the written report on a case-by-case basis for reports of
54 noncompliance under Part II.I if the oral report has been received within 24 hours and no adverse impact
55 on surface waters has been reported.

- 56
57 3. The permittee shall report all instances of noncompliance not reported under Part II.I.2 in writing at the
58 time the next monitoring reports are submitted. The reports shall contain the information listed in Part II.2.

59
60 **NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the**
61 **Department's Regional Office. Pollution Response Program as found at**
62 **<http://deq.virginia.gov/Programs/PollutionResponsePreparedness.aspx>. Reports may be made by**
63 **telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill**
64 **the immediate reporting requirement. For emergencies, the Virginia Department of Emergency**
65 **Services maintains a 24 hour telephone service at 1-800-468-8892.**

- 66
67 4. Whenever the permittee becomes aware of a failure to submit any relevant facts, or submitted incorrect
68 information in any report to the Department, it shall promptly submit such facts or information.

69
70 **J. NOTICE OF PLANNED CHANGES**

- 71
72 1. The permittee shall give notice to the Department as soon as possible of any planned physical alterations
73 or additions to the permitted facility. Notice is required only when:

- 74 a) The permittee plans alteration or addition to any building, structure, facility, or installation from which
75 there is or may be a discharge of pollutants, the construction of which commenced:

- 76
77 1) After promulgation of standards of performance under § 306 of the Clean Water Act that are
78 applicable to such source; or
79
80 2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act
81 that are applicable to such source, but only if the standards are promulgated in accordance
82 with Section 306 within 120 days of their proposal.

- 83 b) The permittee plans alteration or addition that would significantly change the nature or increase the
84 quantity of pollutants discharged. This notification applies to pollutants which are not subject to
85 effluent limitations in this state permit; or

- 86
87 2. The permittee shall give advance notice to the Department of any planned changes in the permitted
88 facility or activity, which may result in noncompliance with permit requirements.

89
90 **K. SIGNATORY REQUIREMENTS**

- 91
92 1. Permit Applications. All permit applications shall be signed as follows:

- 93 a) For a corporation: by a responsible corporate officer. For the purpose of this subsection, a
94 responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the
95 corporation in charge of a principal business function, or any other person who performs similar
96 policy- or decision-making functions for the corporation, or (ii) the manager of one or more
97 manufacturing, production, or operating facilities, provided the manager is authorized to make
98 management decisions which govern the operation of the regulated facility including having the
99 explicit or implicit duty of making major capital investment recommendations, and initiating and
00
01
02

directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

- b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a public agency includes:
 - 1) The chief executive officer of the agency, or
 - 2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
2. Reports, etc. All reports required by permits, and other information requested by the Board shall be signed by a person described in Part II.K.1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- a) The authorization is made in writing by a person described in Part II.K.1;
 - b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
 - c) The written authorization is submitted to the Department.
3. Changes to authorization. If an authorization under Part II.K.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II.K.2 shall be submitted to the Department prior to or together with any reports, or information to be signed by an authorized representative.
4. Certification. Any person signing a document under Parts II.K.1 or 2 shall make the following certification:
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. DUTY TO COMPLY

The permittee shall comply with all conditions of this state permit. Any permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this state permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this state permit has not yet been modified to incorporate the requirement.

M. DUTY TO REAPPLY

If the permittee wishes to continue an activity regulated by this state permit after the expiration date of this state permit, the permittee shall submit a completed EPA Form 1, an updated MS4 Program Plan including benchmarks and milestones for the next permit cycle and the second phase of the Chesapeake Bay TMDL action plan, at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board. The Board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

N. EFFECT OF A PERMIT

This state permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. STATE LAW

Nothing in this state permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II.U), and "upset" (Part II.V) nothing in this state permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. OIL AND HAZARDOUS SUBSTANCE LIABILITY

Nothing in this state permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Sections 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or section 311 of the Clean Water Act.

Q. PROPER OPERATION AND MAINTENANCE

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this state permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this state permit.

R. DISPOSAL OF SOLIDS OR SLUDGES

Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering surface waters.

S. DUTY TO MITIGATE

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this state permit,

which has a reasonable likelihood of adversely affecting human health or the environment.

T. NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this state permit.

U. BYPASS

1. "Bypass", as defined in 9 VAC 25-870-10, means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.U.2 and U.3.
2. Notice
 - a) Anticipated Bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least ten days before the date of the bypass.
 - b) Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II.I.
3. Prohibition of bypass.
 - a) Bypass is prohibited, and the Board or its designee may take enforcement action against a permittee for bypass, unless:
 - 1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - 2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
 - 3) The permittee submitted notices as required under Part II.U.2.
 - b) The Board or its designee may approve an anticipated bypass, after considering its adverse effects, if the Board determines that it will meet the three conditions listed above in Part II.U.3 a.

V. UPSET

1. An upset, as defined in 9 VAC 25-870-10, constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II.V.3 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.
2. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
3. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- a) An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b) The permitted facility was at the time being properly operated;
 - c) The permittee submitted notice of the upset as required in Part II.I; and
 - d) The permittee complied with any remedial measures required under Part II.S.
4. In any enforcement preceding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. INSPECTION AND ENTRY

The permittee shall allow the Director as the Board's designee, or an authorized representative (including an authorized contractor acting as a representative of the administrator) upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this state permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this state permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this state permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the Virginia Stormwater Management Act, any substances or parameters at any location.

For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. PERMIT ACTIONS

Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. TRANSFER OF PERMITS

1. Permits are not transferable to any person except after notice to the Department. Except as provided in Part II.Y.2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.
2. As an alternative to transfers under Part II.Y.1., this state permit may be automatically transferred to a new permittee if:
 - a) The current permittee notifies the Department at least two days in advance of the proposed transfer of the title to the facility or property;

- 19
20
21
22
23
24
25
26
- b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
 - c) The Board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II.Y.2.b.

27 **Z. SEVERABILITY**

28
29 The provisions of this state permit are severable, and if any provision of this state permit or the application of any
30 provision of this state permit to any circumstance is held invalid, the application of such provision to other
31 circumstances, and the remainder of this state permit, shall not be affected thereby.

TMDL Report	EPA Approval Date	SWCB Approval Date	TMDL Watershed	ID305B	Pollutant	WLA	The WLA is aggregated between the permittee and these stormwater permittees:
Total Maximum Daily Loads of Bacteria for Back River in York County and Cities of Hampton, Poquoson, and Newport News, Virginia	4/24/2014	6/30/2014	Newmarket Creek - Lower Riverine	VAT-C07R_NEW01A06	E.coli	3.78 E+13 cfu/year 2.31 E+11 cfu/day	VDOT (VAR040115), DOE - Thomas Jefferson Accelerator Facility (VAR040079)
Fecal Bacteria Total Maximum Daily Load Development for Warwick River: Primary Contact Recreational Use and Shellfish Harvesting Use	2/29/2008	4/28/2009	Skiffes Creek	VAT-G11E_SFF02A08	Fecal Coliform	4.24E+10 cfu/year 1.16E+08 cfu/day	
			Deep Creek - Lower	VAT-G11E_DEP01A02	Enterococcus	5.27E+12 cfu/year 1.44E+10 cfu/day	
			Warwick River - Upper Tidal Portion	VAT-G11E_WWK01A08	Fecal Coliform		
			Warwick River - Middle Tidal Portion	VAT-G11E_WWK02A08	Fecal Coliform	3.19E+11 cfu/year 8.74E+08 cfu/day	
			Warwick River - Lower Tidal Portion	VAT-G11E_WWK03A08	Enterococcus		
Chesapeake Bay TMDL	12/29/2010		JMSMH – Chesapeake Bay Segment ID		Total Nitrogen	146,635.73 lbs/year	All regulated stormwater permits
					Total Phosphorus	27,233.46 lbs/year	All regulated stormwater permits
					Total Suspended Solids	3,807,002.38 lbs/year	All regulated stormwater permits
			JMSPH – Chesapeake Bay Segment ID		Total Nitrogen	16,993.40 lbs/year	All regulated stormwater permits
					Total Phosphorus	3,493.19 lbs/year	All regulated stormwater permits
					Total Suspended Solids	578,934.45 lbs/year	All regulated stormwater permits
			MOBPH – Chesapeake Bay Segment ID		Total Nitrogen	33,939.80 lbs/year	All regulated stormwater permits
					Total Phosphorus	6,449.16 lbs/year	All regulated stormwater permits
					Total Suspended Solids	555,625.26 lbs/year	All regulated stormwater permits
					Total Suspended Solids		All regulated stormwater permits



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

2011 SEP 27 PM 4:08
EPA REGION III PHILA. PA

In the Matter of:

City of Newport, Virginia
2400 Washington Avenue
Newport News, VA 23607

Respondent

Proceeding to Assess Class II
Administrative Penalty and Notice of
Opportunity to Request Hearing Under
Section 309(g) of the Clean Water Act

Docket No. CWA-03-2011-0162

I. STATUTORY AUTHORITY

1. Pursuant to Section 309(g) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director (Complainant), pursuant to Delegation No. 2-52-A.
2. This action is governed by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule," 40 C.F.R. Part 22 (hereinafter, Part 22 Procedural Rules), a copy of which is enclosed.

II. FACTUAL AND LEGAL ALLEGATIONS

3. The City of Newport, Virginia (Respondent) is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
4. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system (MS4) as that term is defined in 40 C.F.R. § 122.26(b)(8).
5. Respondent's MS4 is located within the geographic boundaries of City of Newport, Virginia.

6. The City of Newport News is located in Southeastern Virginia and encompasses a total area of 68 square miles. Newport is bordered by the City of Hampton, the James River, the Chesapeake Bay, and the Counties of York and James City. Stormwater from the County drains to "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.
7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.
8. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
9. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
10. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
11. The term "municipal separate storm sewer system" ("MS4") includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
12. A NPDES permit is required for discharges from an "MS4" serving a population of 100,000 or more, Section 402(p)(2)(c) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
13. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Virginia Department of Environmental Quality ("VADEQ") to issue NPDES permits on May 20, 1991. On December 30, 2004, EPA approved the Commonwealth of Virginia's request to transfer the permitting program for construction and MS4 storm water discharges from VADEQ to the Virginia Department of Conservation and Recreation.

14. VADEQ issued to Respondent an NPDES MS4 Discharge Permit No. VA0088641 on April 10, 2001 (hereinafter the "MS4 Permit"). The MS4 Permit expired on April 10, 2006, and has been administratively extended, pending issuance of a new permit.
15. On June 14 and June 15, 2010, a compliance inspection team comprised of EPA and authorized representatives of EPA inspected Respondent's MS4 program.
16. The allegations of paragraphs 1 through 15 are re-alleged and incorporated herein for purposes of each count below.

III. FINDINGS OF VIOLATION

Count #1

Private Storm Water Management Facilities

17. Part I.A.1.a (2) of the Permit requires the Respondent to adhere to and enforce all City storm water-related ordinances pertaining to development and redevelopment.
18. The Respondent's Stormwater Management ordinances Sec. 37.1-36(a); Sec. 37.1-36(b); Sec. 37.1-37(b);, Sec. 37.1-39(a); and Sec. 37.1-39.(c) requires post-construction stormwater management (SWM) at construction sites, in accordance with City standards, and that post-construction SWM structures be maintained by the owner of the structures.
19. Based upon investigation of the Respondent's MS4 program, EPA determined that the Respondent had not adhered to, and where applicable, not pursued corrective actions or enforcement against owners of SWM structural controls for their failure to perform long-term maintenance and repair of structural controls.
20. Respondent failed to comply with Part I.A.1.a (2) of the Permit by not adhering to, and where applicable, not enforcing all storm water related ordinances pertaining to development and redevelopment.

Count #2

Chesapeake Bay Act Ordinance

21. Permit Part I.A.1.d (1) requires the permittee to operate in accordance with, and continue enforcement of, City ordinances, including the Chesapeake Bay Preservation Act (CBA) Ordinance Sec. 37.1.51.
22. According to the documentation provided by Newport News, there were at least two occurrences in which ordinance violations occurred within the Resource Protection Area (RPA), on July 24, 2007, and May 8, 2008. No further details or documentation on enforcement of the violations was provided by the City regarding follow-up action or enforcement of the two occurrences.

23. During the investigation by EPA of Respondent's MS4 Program, EPA learned that the Respondent did not conduct periodic follow-up inspections of residential properties that are required to install vegetation in the RPA, or Resource Management Area (RMA). Under "Vegetative Maintenance Agreements" required pursuant to the CBA ordinance, vegetation must be installed to offset an increase in impervious space in the RPA and RMA. The purpose of such inspections would be to ensure that the vegetation has survived, or that the vegetation has not been removed.
24. Respondent failed to comply with Permit Part I.A.1.d by not operating in accordance with, and not pursuing enforcement actions against violations of the CBA Ordinance.

Count #3

Industrial and Commercial Facilities

25. Part I.A.1.c of the permit states that the permittee must have a program to monitor and control pollutants in storm water discharges from ... hazardous waste treatment, storage and disposal facilities, and industrial facilities subject to Section 313 of the Emergency Planning & Community Right to Know Act (EPCRA), and facilities determined by the Respondent to be contributing substantial pollutant loadings to the MS4.
26. During the June 14 and June 15, 2010 review of the Respondent's MS4 program, Respondent indicated that it does not have the authority to conduct inspection of industrial and commercial facilities. The Respondent has indicated that its Fire Department is utilized to conduct stormwater inspections for complying with Part I.A.1.c of the permit. However, the EPA inspection team observed that the Fire Department's inspection reports do not include a section devoted to stormwater issues.
27. Respondent failed to comply with Part I.A. of the Permit by not including controls necessary to effectively prohibit the unauthorized discharge of non-storm water into the MS4 and reduce the discharge of pollutants from the MS4 to the maximum extent practicable.
28. Further, Respondent failed to comply with Part I.A.1.c of the permit by not having "a program to monitor and control pollutants in storm water discharges" from hazardous waste treatment, storage and disposal facilities, and industrial facilities subject to Section 313 of the EPCRA, and facilities determined by the Respondent to contributing substantial pollutant loadings" to the MS4.

Count #4

Industrial and Commercial Facilities

29. Pursuant to Part I.B.3 of the Permit, the Respondent shall ensure that "[a]ll pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable...as specified in Part I.A. of this permit."

30. During the June 14 and June 15, 2010 review of the Respondent's MS4 program, the EPA inspection team noted during the inspection of "Pete's Used Auto Parts", numerous environmental concerns were by identified by the EPA inspection team that were not noted on the inspection report from the Fire Department, including:

- Used oil drying material had not yet been cleaned up at multiple locations around the facility. Oil staining was also present around the facility.
- Blue-green staining, indicating a spill, was located near the waste oil area.
- Multiple drums, including open drums, and buckets containing product or other liquid materials were located around the facility. Some drums and buckets were located under a roofed area; however, many were not. One drum, which was not located under a roofed area, was actively leaking oil. Oil could be seen on top of the drum as well as on the grass and dirt area next to the drum. Oily staining was present on the side of the drum. Additionally, secondary containment was not present around the drums or buckets. Most drums were not labeled with their contents.
- Oil staining and spillage had occurred around two large used oil tanks, outside of the secondary containment. The tanks were located outside, but under a roofed area.
- Multiple engines were located on the ground around the wash rack area. Oil staining was present around the engines.

31. Without appropriate controls in place, the materials described in paragraph 30 will be transported to the MS4 when exposed to storm water.

32. Respondent failed to comply with Part I.B.3. of the Permit by failing to reduce the discharge of pollutants transported by storm water runoff from the MS4 to the maximum extent practicable, and by not effectively prohibiting non-stormwater discharges into the MS4.

Count #5 Municipal Yards

33. Pursuant to Part I.B.3 of the Permit, the Respondent shall ensure that "[a]ll pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable...as specified in Part I.A. of this permit."

34. During the June 14 and June 15, 2010 review of the Respondent's MS4 program, the EPA inspection team observed material management issues at the City Fleet Maintenance garage, the City Traffic Operations Facility, and the City Stockpile Area, including:

- A truck leaking oil was parked near a concrete drainage ditch. Oil staining could be seen at the entrance to the ditch.
- Oil staining was present around the facility.
- Rusty metal was located around the facility.
- An uncovered dumpster was present on site.
- Metal parts were scattered around the back of the facility.
- An open paint drum, coated on the inside with paint was lying on its side outside.
- A rusty spray paint can was located outside.

- Evidence of paint spills and paint spray were seen on vegetation and paved areas around the facility. Paint from a hose placed on a curb had spilled outside the curb. Paint spray was also present on vegetation outside of the wire fence behind the facility. Gaps were present between the concrete barricades. In one case, gravel had spilled through and accumulated behind the barricades.
 - An open dumpster containing trash was present on site.
 - Trash was strewn about the site. Piles of trash were located behind the barricades.
 - An oily sheen was present on mud behind the barricades.
35. Respondent failed to comply with Part I.B.3. of the Permit by failing to reduce pollutants discharged from the municipal separate storm sewer system to the maximum extent practicable.

Count #6
Construction Sites

36. Part I.A.1.a (2) of the Permit requires the Respondent to adhere to and enforce all storm water related ordinances pertaining to development and redevelopment.
37. Permit Part I.A.1.d. states that the City shall "...continue implementation and maintenance of structural and nonstructural best management practices to *reduce pollutants* in storm water runoff from construction sites."
38. Pursuant to Part I.B.3 of the MS4 Permit, the Respondent shall ensure that "[a]ll pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable...as specified in Part I.A. of this permit."
39. The Respondent's ordinance Sec. 37.1-21. – Definitions, defines "*Other wastes*" as materials that can adversely affect waters of the United States should they be discharged into same, including, but not limited to, garbage, refuse, lime, fertilizer, ashes, offal, tar, paint, solvents, petroleum products, antifreeze and chemicals.
40. The Respondent's ordinance Sec. 37.1-22. - Violations and penalties, states that it shall be a violation of this article to discharge, or cause or allow to be discharged, sewage, industrial wastes or other wastes into the storm sewer system, or any component thereof, or onto driveways, sidewalks, parking lots or other areas draining to the storm sewer system.
41. The Respondent's Storm Water Management Program, Section 12.0, requires compliance with the VA Erosion and Sediment Laws and Regulations.
42. During the June 14 and June 15, 2010 review of the Respondent's MS4 program, which included construction site inspection reports, the EPA inspection team determined that Respondent has not conducted all bi-weekly inspections and post-rain event inspections as required by 4VAC50-30 (State of Virginia Erosion and Sediment Control Regulations – Minimum Standards).

43. Based upon EPA's review of the Respondent's MS4 Management Program For Construction Sites, including requirements for erosion and sediment management plans, EPA determined that the Respondent has not enforced all storm water ordinances by not managing sources of pollutants (i.e. "*Other Wastes*") other than sediment at construction sites.
44. Based upon EPA's review of the Respondent's MS4 Management Program For Construction Sites, EPA determined that the Respondent has not continued implementation and maintenance of structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites; and has not ensured that "[a]ll pollutants, such as form release oils, vehicle and equipment related-fluids, curing compounds, that are discharged from the MS4 shall be reduced to the maximum extent practicable.
45. Respondent failed to comply with Part I.A.1.d. of the Permit by not conducting all bi-weekly inspections and post-rain event inspections as required by 4VAC50-30 (State of Virginia Erosion and Sediment Control Regulations – Minimum Standards).
46. Respondent failed to comply with Permit Part I.A.1.d.(2) of the Permit by not continuing implementation and maintenance of structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites.
47. Respondent failed to comply with Part I.B.3 of the Permit by not ensuring that "[a]ll pollutants (including "*Other Wastes*") discharged from the MS4 shall be reduced to the maximum extent practicable...as specified in Part I.A. of this permit."
48. Respondent failed to comply with Part I.A.1.a. (2) of the Permit by not adhering to and enforcing ordinance Sec. 37.1-22.

IV. PROPOSED CIVIL PENALTY

49. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), provides that any person who has violated any NPDES permit condition or limitation is liable for an administrative penalty not to exceed \$10,000 per day for each such violation, up to a total penalty amount of \$125,000.
50. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after March 15, 2004, is liable for an administrative penalty not to exceed \$11,000 per day for each such violation occurring after March 15, 2004 through January 11, 2009, up to a total penalty amount of \$177,500.

51. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each such violation occurring after January 12, 2009, up to a total penalty amount of \$177,500.
52. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Part 22 Procedural Rules, Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of one hundred and fifty five thousand dollars (\$155,000) for the violations alleged herein. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
53. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations and such other matters as justice may require, 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant or EPA at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.
54. EPA may issue a Final Order Assessing Administrative Penalties after a thirty (30) day comment period unless Respondent either responds to the allegations in the Complaint and requests a hearing according to the terms of Section V, below, or pays the civil penalty in accordance with Section VI herein (Quick Resolution).
55. If warranted, EPA may adjust the proposed civil penalty assessed in this Complaint. In so doing, the Agency will consider any number of factors in making this adjustment, including Respondent's ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.
56. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act, any other Federal or State laws, and/or with any separate Compliance Order issued under Section 309 of the Act, 33 U.S.C. § 1319, for the violations alleged herein.

**V. ANSWER TO COMPLAINT AND
OPPORTUNITY TO REQUEST HEARING**

57. Respondent must file an Answer to this Complaint; failure to file an Answer may result in entry of a Default Judgment against Respondent. Respondent's default constitutes a binding admission of all allegations made in the Complaint and waiver of Respondent's right to a Hearing under the CWA. The civil penalty proposed herein shall then become due and payable upon issuance of the Default Order.
58. Upon issuance of a Default Judgment, the civil penalty proposed herein shall become due and payable.
59. Respondent's failure to pay the entire penalty assessed by the Default Order by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In addition, a Default Penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.
60. Any Answer must clearly and directly admit, deny, and/or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly and directly state that the Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also indicate the following:
- a. Specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
 - b. Specific facts that Respondent disputes;
 - c. Respondent's basis for opposing the proposed penalty; and
 - d. Whether Respondent requests a hearing.
61. Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.
62. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.
63. EPA is obligated, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to give members of the public notice of and an opportunity to comment on this proposed penalty assessment.

64. If Respondent requests a hearing on this proposed penalty assessment, members of the public who submitted timely comments on this proposed penalty assessment will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to not only be notified of the hearing but also to be heard and to present evidence at the hearing on the appropriateness of this proposed penalty assessment.
65. If Respondent does not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.
66. Any hearing that Respondent requests will be held and conducted in accordance with the Part 22 Procedural Rules.
67. At such a hearing, Respondent may contest any material fact contained in the Factual and Legal Allegations listed in Section II above, the Findings of Violation listed in Section III, above, and the appropriateness of the amount of the proposed civil penalty in Section IV, above.
68. Any Answer to this Complaint, and any Request for Hearing, must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

69. Copies of the Answer and any Request for Hearing, along with any and all other documents filed in this action, shall also be sent to the following:

Andy Duchovnay
Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

70. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. The Answer and any subsequent documents filed in this action should be sent to:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VI. QUICK RESOLUTION

71. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations in 40 C.F.R. § 22.45, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.
72. If Respondent pays the specific penalty proposed in this Complaint within forty (40) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.
73. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 40 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint.

- a. Such statement shall be filed with the following:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and a copy shall be provided to:

Andy Duchovnay (3RC20)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

d. Via ACH (Automated Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Finance Center Contacts:

1) Jesse White: 301-887-6548

2) John Schmid: 202-874-7026

3) REX (Remittance Express) 866-234-5681

76. At the same time payment is made, copies of the check and/or proof of payment via wire transfer or ACH shall be mailed to:

Regional Hearing Clerk (3RC00)

U.S. EPA, Region III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

and to:

Andy Duchovnay (3RC20)

Assistant Regional Counsel

U.S. EPA, Region III

1650 Arch Street

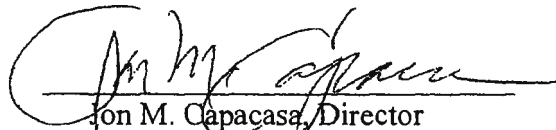
Philadelphia, Pennsylvania 19103-2029.

77. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment of the penalty by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

VII. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Part 22 Procedural Rules prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 9/27/11

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", written over a horizontal line.


Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection
Agency, Region III

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I filed the original attached Administrative Penalty Complaint and Notice of Opportunity to Request Hearing with the Regional Hearing Clerk, and , directed that a copy thereof be sent to the following person via certified mail, return receipt requested:

The Honorable McKinley L. Price, Mayor
2400 Washington Avenue
Newport News, VA 23607

Date: 9/27/11



Andy Duchovnay
Assistant Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029



RECEIVED
SEP 27 PM 4:07
EPA REGION III, PHILA. PA
CLERK

IN THE MATTER OF :

City of Newport, Virginia
2400 Washington Avenue
Newport News, VA 23607

Docket No. CWA- 03-2011-0161DN

FINDINGS OF VIOLATION
AND ORDER FOR COMPLIANCE

Respondent

I. STATUTORY AUTHORITY

1. This Order for Compliance ("Order") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Section 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(a). The Administrator has delegated these authority to the Regional Administrator of Region III, who in turn has delegated them to the Director of the Water Protection Division of Region III.

II. FACTUAL AND REGULATORY BACKGROUND

2. The City of Newport, Virginia (Respondent) is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
3. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system (MS4) as that term is defined in 40 C.F.R. § 122.26(b)(8).
4. Respondent's MS4 is located within the geographic boundaries of City of Newport, Virginia.
5. The City of Newport News is located in Southeastern Virginia and encompasses a total area of 68 square miles. Newport is bordered by the City of Hampton, the James River, the Chesapeake Bay, and the Counties of York and James City. Stormwater from the County drains to "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

6. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.
7. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
8. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
9. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
10. The term "municipal separate storm sewer system" ("MS4") includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
11. A NPDES permit is required for discharges from an "MS4" serving a population of 100,000 or more, Section 402(p)(2)(c) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
12. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Virginia Department of Environmental Quality ("VADEQ") to issue NPDES permits on May 20, 1991. On December 30, 2004, EPA approved the Commonwealth of Virginia's request to transfer the permitting program for construction and MS4 storm water discharges from VADEQ to the Virginia Department of Conservation and Recreation.
13. VADEQ issued to Respondent an NPDES MS4 Discharge Permit No. VA0088641 on April 10, 2001 (hereinafter the "MS4 Permit"). The MS4 Permit expired on April 10, 2006 and has been administratively extended, pending issuance of a new permit.
14. On June 14 and June 15, 2010, a compliance inspection team comprised of EPA and authorized representatives of EPA inspected Respondent's MS4 program.
15. The allegations of paragraphs 1 through 14 are re-alleged and incorporated herein for purposes of each count below.

III. FINDINGS OF VIOLATION

Count #1

Private Storm Water Management Facilities

16. Part I.A.1.a (2) of the Permit requires the Respondent to adhere to and enforce all City storm water-related ordinances pertaining to development and redevelopment.
17. The Respondent's Stormwater Management ordinances Sec. 37.1-36(a); Sec. 37.1-36(b); Sec. 37.1-37(b); Sec. 37.1-39(a); and Sec. 37.1-39(c) requires post-construction stormwater management (SWM) at construction sites, in accordance with City standards, and that post-construction SWM structures be maintained by the owner of the structures.
18. Based upon investigation of the Respondent's MS4 program, EPA determined that the Respondent had not adhered to, and where applicable, not pursued corrective actions or enforcement against owners of SWM structural controls for their failure to perform long-term maintenance and repair of structural controls.
19. Respondent failed to comply with Part I.A.1.a (2) of the Permit by not adhering to, and where applicable, not enforcing all storm water related ordinances pertaining to development and redevelopment.

Count #2

Chesapeake Bay Act Ordinance

20. Permit Part I.A.1.d (1) requires the permittee to operate in accordance with, and continue enforcement of, City ordinances, including the Chesapeake Bay Preservation Act (CBA) Ordinance Sec. 37.1.51.
21. According to the documentation provided by Newport News, there were at least two occurrences in which ordinance violations occurred within the Resource Protection Area (RPA), on July 24, 2007 and May 8, 2008. No further details or documentation on enforcement of the violations was provided by the City regarding follow-up action or enforcement of the two occurrences.
22. During the investigation by EPA of Respondent's MS4 Program, EPA learned that the Respondent did not conduct periodic follow-up inspections of residential properties that are required to install vegetation in the RPA, or Resource Management Area (RMA). Under "Vegetative Maintenance Agreements" required pursuant to the CBA ordinance, vegetation must be installed to offset an increase in impervious space in the RPA and RMA. The purpose of such inspections would be to ensure that the vegetation has survived, or that the vegetation has not been removed.

23. Respondent failed to comply with Permit Part I.A.1.d by not operating in accordance with, and not pursuing enforcement actions against violations of the CBA Ordinance.

Count #3

Industrial and Commercial Facilities

24. Part I.A.1.c of the permit states that the permittee must have a program to monitor and control pollutants in storm water discharges from ... hazardous waste treatment, storage and disposal facilities, and industrial facilities subject to Section 313 of the Emergency Planning & Community Right to Know Act (EPCRA), and facilities determined by the Respondent to be contributing substantial pollutant loadings to the MS4.
25. During the June 14 and June 15, 2010 review of the Respondent's MS4 program, Respondent indicated that it does not have the authority to conduct inspection of industrial and commercial facilities. The Respondent has indicated that its Fire Department is utilized to conduct stormwater inspections for complying with Part I.A.1.c of the permit. However, the EPA inspection team observed that the Fire Department's inspection reports do not include a section devoted to stormwater issues.
26. Respondent failed to comply with Part I.A. of the Permit by not including controls necessary to effectively prohibit the unauthorized discharge of non-storm water into the MS4 and reduce the discharge of pollutants from the MS4 to the maximum extent practicable.
27. Further, Respondent failed to comply with Part I.A.1.c of the permit by not having "a program to monitor and control pollutants in storm water discharges" from hazardous waste treatment, storage and disposal facilities, and industrial facilities subject to Section 313 of the EPCRA, and facilities determined by the Respondent to contributing substantial pollutant loadings" to the MS4.

Count #4

Industrial and Commercial Facilities

28. Pursuant to Part I.B.3 of the Permit, the Respondent shall ensure that "[a]ll pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable...as specified in Part I.A. of this permit."
29. During the June 14 and June 15, 2010 review of the Respondent's MS4 program, the EPA inspection team noted during the inspection of "Pete's Used Auto Parts", numerous environmental concerns were by identified by the EPA inspection team that were not noted on the inspection report from the Fire Department, including:
- Used oil drying material had not yet been cleaned up at multiple locations around the facility. Oil staining was also present around the facility.
 - Blue-green staining, indicating a spill, was located near the waste oil area.

- Multiple drums, including open drums, and buckets containing product or other liquid materials were located around the facility. Some drums and buckets were located under a roofed area; however, many were not. One drum, which was not located under a roofed area, was actively leaking oil. Oil could be seen on top of the drum as well as on the grass and dirt area next to the drum. Oily staining was present on the side of the drum. Additionally, secondary containment was not present around the drums or buckets. Most drums were not labeled with their contents.
 - Oil staining and spillage had occurred around two large used oil tanks, outside of the secondary containment. The tanks were located outside, but under a roofed area.
 - Multiple engines were located on the ground around the wash rack area. Oil staining was present around the engines.
30. Without appropriate controls in place, the materials described in paragraph 29 will be transported to the MS4 when exposed to storm water.
31. Respondent failed to comply with Part I.B.3. of the Permit by failing to reduce the discharge of pollutants transported by storm water runoff from the MS4 to the maximum extent practicable, and by not effectively prohibiting non-stormwater discharges into the MS4.

Count #5
Municipal Yards

32. Pursuant to Part I.B.3 of the Permit, the Respondent shall ensure that “[a]ll pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable...as specified in Part I.A. of this permit.”
33. During the June 14 and June 15, 2010 review of the Respondent’s MS4 program, the EPA inspection team observed material management issues at the City Fleet Maintenance garage, the City Traffic Operations Facility, and the City Stockpile Area, including:
- A truck leaking oil was parked near a concrete drainage ditch. Oil staining could be seen at the entrance to the ditch.
 - Oil staining was present around the facility.
 - Rusty metal was located around the facility.
 - An uncovered dumpster was present on site.
 - Metal parts were scattered around the back of the facility.
 - An open paint drum, coated on the inside with paint was lying on its side outside.
 - A rusty spray paint can was located outside.
 - Evidence of paint spills and paint spray were seen on vegetation and paved areas around the facility. Paint from a hose placed on a curb had spilled outside the curb. Paint spray was also present on vegetation outside of the wire fence behind the facility.
 - Gaps were present between the concrete barricades. In one case, gravel had spilled through and accumulated behind the barricades.
 - An open dumpster containing trash was present on site.
 - Trash was strewn about the site. Piles of trash were located behind the barricades.
 - An oily sheen was present on mud behind the barricades.

34. Respondent failed to comply with Part I.B.3. of the Permit by failing to reduce pollutants discharged from the municipal separate storm sewer system to the maximum extent practicable.

Count #6
Construction Sites

35. Part I.A.1.a (2) of the Permit requires the Respondent to adhere to and enforce all storm water related ordinances pertaining to development and redevelopment.
36. Permit Part I.A.1.d. states that the City shall "...continue implementation and maintenance of structural and nonstructural best management practices to *reduce pollutants* in storm water runoff from construction sites."
37. Pursuant to Part I.B.3 of the MS4 Permit, the Respondent shall ensure that "[a]ll pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable...as specified in Part I.A. of this permit."
38. The Respondent's ordinance Sec. 37.1-21. – Definitions, defines "*Other wastes*" as materials that can adversely affect waters of the United States should they be discharged into same, including, but not limited to, garbage, refuse, lime, fertilizer, ashes, offal, tar, paint, solvents, petroleum products, antifreeze and chemicals.
39. The Respondent's ordinance Sec. 37.1-22. - Violations and penalties, states that it shall be a violation of this article to discharge, or cause or allow to be discharged, sewage, industrial wastes or other wastes into the storm sewer system, or any component thereof, or onto driveways, sidewalks, parking lots or other areas draining to the storm sewer system.
40. The Respondent's Storm Water Management Program, Section 12.0, requires compliance with the VA Erosion and Sediment Laws and Regulations.
41. During the June 14 and June 15, 2010 review of the Respondent's MS4 program, which included construction site inspection reports, the EPA inspection team determined that Respondent has not conducted all bi-weekly inspections and post-rain event inspections as required by 4VAC50-30 (State of Virginia Erosion and Sediment Control Regulations – Minimum Standards).
42. Based upon EPA's review of the Respondent's MS4 Management Program For Construction Sites, including requirements for erosion and sediment management plans, EPA determined that the Respondent has not enforced all storm water ordinances by not managing sources of pollutants (i.e. "*Other Wastes*") other than sediment at construction sites.
43. Based upon EPA's review of the Respondent's MS4 Management Program For Construction Sites, EPA determined that the Respondent has not continued implementation and maintenance of structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites; and has not ensured that "[a]ll pollutants, such as form release oils, vehicle and equipment related-fluids, curing compounds, that are discharged from the MS4 shall be reduced to the maximum extent practicable.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III

IN THE MATTER OF:

CITY OF NEWPORT NEWS,

Respondent.

Docket No's CWA-03-2011-0162

A HEARING IS REQUESTED IN THE MATTER BY CITY OF NEWPORT NEWS**ANSWER TO PROCEEDING TO ASSESS CLASS II
ADMINISTRATIVE PENALTY AND NOTICE OF OPPORTUNITY
TO REQUEST HEARING AND REQUEST FOR HEARING**

COMES NOW the City of Newport News ("the City") and, in answer to the Proceeding to Assess Class II Administrative Penalty and Notice of Opportunity to Request Hearing Under Section 309(g) of the Clean Water Act ("the Penalty Complaint"), states as follows:

1. In response to paragraph 1 of the Penalty Complaint, the City admits that the Environmental Protection Agency ("EPA") has jurisdiction to seek penalties for violations of a NPDES permit involving pollutants that enter into waters of the United States, to the extent that it can prove a violation of permit provisions. However, 33 U.S.C. §1342(a)(4) indicates that EPA has jurisdiction through its permit only over those alleged violations with a nexus to navigable waters. The City thus reserves the right to challenge any claimed violation that EPA is unable to prove resulted in pollutants entering navigable waters.

2. The City states the 40 C.F.R. Part 22 speaks for itself, and denies any wrongdoing.
3. The City admits the allegations of paragraph 3 of the Penalty Complaint.
4. The City admits the allegations of paragraph 4 of the Penalty Complaint.

5. The City admits the allegations of paragraph 5 of the Penalty Complaint.

6. Although the City admits that stormwater from the City ultimately drains to waters of the United States, given the absence of allegations that supply the nexus between the issues addressed in the Penalty Complaint, the City denies the allegation of paragraph 6 of the Penalty Complaint and demands strict proof that alleged violations resulted in pollutants actually entering waters of the United States.. As generally understood, the City of Newport News does not border on the Chesapeake Bay, but on the James River and Hampton Roads Harbor, which drains into the Chesapeake Bay.

7. The City admits the allegations of paragraph 7 of the Penalty Complaint.

8. The City admits the allegations of paragraph 8 of the Penalty Complaint.

9. The City admits the allegations of paragraph 9 of the Penalty Complaint, and states affirmatively that the Penalty Complaint fails to define “pollutant..

10. The City admits the allegations of paragraph 10 of the Penalty Complaint.

11. The City denies the allegations of paragraph 11 of the Penalty Complaint.

Regardless of the definition of an MS4 in the Code of Federal Regulations, the City denies that it has jurisdiction over industrial wastes unless the same enters into the City’s MS4. Onsite inspections of potential industrial pollutant sources is under the authority of the Virginia Department of Environmental Quality (“DEQ”). Virginia recognizes the Dillon Rule, which limits the authority of a locality to those powers that are granted to it by the state legislature. This authority granted by the state is strictly construed. The allegations of paragraph 11 of the Penalty Complaint presuppose a level of authority that has not been granted to the City by any statutory enactment, and, as such, the City denies it has jurisdiction over any such industrial wastes until

such time as a pollutant leaves the industrial site and enters the MS4. Likewise, the City's jurisdiction over wastewater conveyance extends only to the property it owns. It does not assume authority over private laterals or the ultimate outfalls, which are owned by the Hampton Roads Sanitation District. Only to the extent that a discharge of sewerage enters the City's MS4 does the City have jurisdiction to treat the incident as a violation of its Stormwater Ordinance.

12. The City admits the allegations of paragraph 12 of the Penalty Complaint.
13. The City admits the allegations of paragraph 13 of the Penalty Complaint.
14. The City admits the allegations of paragraph 14 of the Penalty Complaint.
15. The City admits the allegations of paragraph 15 of the Penalty Complaint.
16. Paragraph 16 of the Penalty Complaint does not require a response.
17. The City, in response to paragraph 17 of the Penalty Complaint, affirmatively states that Part I.A.1.a.(2) of the Permit is self-explanatory, and further states that the terms of the Permit cannot impose requirements that exceed statutory and Constitutional limitations.
18. The City, in response to paragraph 18 of the Penalty Complaint, states that the referenced sections of the City's Stormwater Ordinance speak for themselves, and denies any wrongdoing.
19. The City denies the allegations of paragraph 19 of the Penalty Complaint, and calls for strict proof of said allegations. The allegations are further defective in the following ways:
 - a. The allegations assume duties well beyond those which are imposed on the City through its Stormwater Ordinance. The Clean Water Act requires remedial action to be taken "to the maximum extent practicable". This allegation indicates the use of a strict liability standard to be applied without regard to the circumstances involved or the practicability of the actions demanded.

- b. The allegations indicate an intent to control the means and methods of legal and regulatory action by a sovereign entity, and are violative of the principles of federalism, and contrary to Amendment 10 of the U.S. Constitution.
 - c. The allegations are vague and fail to cite specific examples of any violation claimed, and further fail as they do not show that any action resulted in pollutants reaching the waters of the United States.
 - d. Inspections of sites under the Stormwater Ordinance as it existed at that time of the audit of June 14-15, 2010 ("the Audit") would have required that search warrants be issued, and a showing of probable cause would be necessary to have obtained them. Inspections of the type EPA sets forth in paragraph 19 of the Penalty Complaint, in the absence of probable cause and a search warrant, and without permission, violate the Fourth and Fourteenth Amendments of the U.S. Constitution and Article I, Section 10 of the Virginia Constitution. As of July 1, 2011, a state statute went into effect which grants access for inspection. This statute, however, cannot override constitutional rights and privileges.
 - e. Entry onto and action upon private property without permission or a valid executed contract with the landowner may be violative of private property rights guaranteed through the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 11 of the Virginia Constitution. Furthermore, at the time of the Audit, there was no statutory authority for inspection of stormwater facilities on private property. As of July 1, 2011, a statute went into effect which grants access for inspection. This legislative enactment, however, cannot override constitutional rights and privileges.
20. The allegations of paragraph 20 of the Penalty Complaint are denied, and the City calls for strict proof thereof.
21. The City, in response to paragraph 21 of the Penalty Complaint states that the language of Permit Part I.A.1.d(1) speaks for itself, and denies any wrongdoing.
22. The City denies the allegations of paragraph 22 of the Penalty Complaint. The City resolved both alleged violations as follows:
- a. The alleged violation of July 24, 2007 involved a portion of a privately owned parking lot that encroached on an RPA at 301 Buxton Avenue, Newport News, Virginia. This encroachment pre-existed the Chesapeake Bay Protection Act ordinance ("the CBPA ordinance") and was thus grandfathered. This status meant

that the City could not prosecute this as it would violate the Fifth Amendment rights of the landowner. The issue was resolved when the City bought the entire lot, and demolished not only the encroaching parking lot but all impervious surfaces on the site, and planted vegetation on the site. The lot was purchased under the City's Flood Assistance Program. Thus the City went far beyond any duty imposed on it by the Ordinance or the Permit.

- b. The alleged violation of May 8, 2008 allegedly occurred at 1113 Patrick Lane, a privately owned parcel. The owner erected a shed within the RPA. The City required, pursuant to its CBPA ordinance, that the owner provide a water quality impact assessment, an application for a variance, and the installation of a bio-retention bed as a BMP. The variance was approved by the Board of Zoning Appeals, a body appointed by the Circuit Court of the City of Newport News, and the bio-retention bed was installed. .

23. The City denies the allegations of paragraph 23 of the Penalty Complaint, and calls for strict proof thereof. The City's CBPA ordinance, which was approved by the state agency that administers the VPDES Permit, does not require that the City periodically inspect sites where remediations of CBPA Ordinance violations have occurred. Furthermore, the City must have probable cause that a subsequent violation has occurred and obtain a warrant to enter onto the property. In both these cases, such probable cause did not exist.

24. The City denies the allegations of paragraph 24 of the Penalty Complaint, and calls for strict proof thereof.

25. The City states that the language of Part I.A.1.c. of the Permit speaks for itself and denies any allegations of wrongdoing. The City further states that Part I.A.1.c. (1) requires only an initial inspection of the facilities, and that Part I.A.1.c.(2) indicates that **"the permittee may monitor, or require the facility to monitor, stormwater discharges"**. This language is permissive, not mandatory, as the Penalty Complaint alleges.

26. The City denies the allegations of paragraph 26 of the Penalty Complaint. The

City stated during the Audit that it did not have authority to go onto industrial sites and charge owners with violations of environmental laws or regulations beyond those allotted to the City by the General Assembly. As pointed out repeatedly during the Audit, Virginia is a Dillon Rule state, and a Virginia locality has no authority to regulate an activity unless the General Assembly grants that power. A Virginia locality is allowed to enact a Stormwater Ordinance, an Erosion and Sediment Control Ordinance, and a Chesapeake Bay Protection Act ordinance, each of which the City has adopted. The Stormwater Ordinance, specifically §37.1-22, prohibits discharge of pollutants into the City's MS4. Unless there are pollutants that are actually discharged into that system from the site, there is no violation and no probable cause to obtain a warrant to enter the property. The other two ordinances do not apply. The City has no authority under the Dillon Rule or constitutional law to go onto industrial premises uninvited and cite owners for potential violations of the Stormwater Ordinance. Even when there is an actual violation, a search warrant based on probable cause, in the absence of permission, may be necessary. Even if there were an actual violation, a search warrant would be required.

The City, during the Audit, raised the Dillon Rule and constitutional rights against invasion of property rights and unlawful search and seizure. The allegations of this paragraph indicate that the City is expected to take illegal and ultra vires actions.

The City's Fire Department is the only City Department allowed to go onto private property to make safety inspections. Even then, they must have administrative search warrants. Since the City's Stormwater personnel cannot go onto private property for inspections without a search warrant or permission, the Fire Marshals are asked to tell the Stormwater Division if they observe any stormwater Ordinance violations while on the premises. Such information would

give the City probable cause for a search warrant. Since the Fire Marshals are not empowered to write citations for violation of the Stormwater Ordinance, a line for stormwater violations is not on their checklists.

27. The City denies the allegations of Paragraph 27 of the Penalty Complaint. The control applied is the passage of the Stormwater Ordinance itself. The City does not have authority to exceed its terms, nor can a NPDES or VPDES Permit require ultra vires and illegal activity.

28. The City denies the allegations of Paragraph 28 of the Penalty Complaint. The approved program is the Stormwater Ordinance. The Permit itself makes monitoring elective, not mandatory. The City complied with the law, and no violation resulted.

29. The City denies the allegations of Paragraph 29 of the Penalty Complaint, and demands strict proof that any of the conditions found at Pete's Used Auto Parts, located at 10165 Jefferson Avenue, amounted to a violation of the Stormwater Ordinance, the City's only tool for addressing potential environmental violations on private property. The City relies on all potential defenses.

30. The City denies the allegations of Paragraph 30 of the Penalty Complaint to the extent that they are intended to show a violation of Permit conditions. At the time of the Audit, City personnel opened a manhole at the site where stormwater effluent from Pete's Used Auto Parts enters the MS4. There was no oily sheen on the water nor petroleum smell in the outfall. Thus, the City had no probable cause to enter the facility, nor did it have authority under the Dillon Rule to act. The items that are cited as violations fall under the authority of DEQ. The owner of the facility produced the report of a recent DEQ inspection of the premises. If the City

had cited the owner for the alleged violations noted, it would have been an *ultra vires* act, and violative of rights of the landowner under the Fourth, Fifth and Fourteenth Amendments and Article I, Sections 10 and 11 of the Virginia Constitution. The City's refusal to take illegal or *ultra vires* actions cannot be the basis of a Permit violation.

31. The City denies the allegations of Paragraph 31 of the Penalty Complaint, and affirmatively states that the allegation is sheer speculation and ineffective at stating that a violation of the City's stormwater ordinance had occurred. Violations of the law cannot be based on the fact that the ordinance may have been violated or could potentially be violated; an actual discharge to the MS4 is necessary. No evidence exists as of the date of the Audit that any actual violation of the Stormwater Ordinance took place. Likewise, no evidence exists to prove that any flow from this site reached navigable waters, and, as such, there is no authority to charge this a Permit violation.

32. The City denies the allegations of paragraph 32 of the Penalty Complaint. The City raised these legal issues during the Audit, and they are not addressed in the Penalty Complaint.

33. The City states that the Permit language cited in paragraph 33 of the Penalty Complaint speaks for itself, and denies all allegations of wrongdoing. The City affirmatively states that none of the allegations of Count 5 can be proved to have resulted in pollutants reaching the MS4 or Waters of the United States.

34. The City denies that the allegations of paragraph 34 indicate a violation of the Stormwater Ordinance or the terms of the Permit. The municipal yard is surrounded by an eight foot high chain link fence, and is separated from the stream into which this surface water drains

by a heavily-wooded buffer the varies in width from 50 feet to 250 feet, according to measurements from the City's Geographic Information System (GIS). None of the allegations indicate the location on the yard of the alleged violation, the path or flow of stormwater runoff, or a sufficient nexus to show that any pollutants reached the MS4 and Waters of the United States. In particular:

- a. As to the first bulleted allegation in paragraph 33 of the Penalty Complaint, there are insufficient allegations as to the location of the truck and of the stain to indicate that the oil stain resulted in pollutants reaching the MS4 and Waters of the United States.
- b. As to the second bulleted allegation in paragraph 33 of the Penalty Complaint, on a large paved surface such as the municipal yard, the purpose of which is the storage of City equipment and vehicles, oil stains are inevitable. There is no allegation that these stains contributed pollution that reached the MS4 or Waters of the United States.
- c. As to the third bulleted allegation in paragraph 33 of the Penalty Complaint, stored metal parts, rusty or otherwise, are not pollutants entering an MS4 and the mere existence of this condition does not indicate a violation. This exceeds the authority of EPA to issue a citation for a violation.
- d. As to the fourth bulleted allegation in paragraph 33 of the Penalty Complaint, in the absence of a showing of the location and contents of the dumpster, there is no sufficient allegation to indicate that pollutants reached the MS4 or Waters of the United States.
- e. As to the fifth bulleted allegation in paragraph 33 of the Penalty Complaint, the City incorporates the defenses set out in subparagraph (c) above.
- f. As to the sixth bulleted allegation in paragraph 33 of the Penalty Complaint, the paint indicated was for the purpose of painting street markings. This is a vinyl based paint that is environmentally inert when dried, which is the reason it is used for street markings. There is nothing to indicate that this alleged violation resulted in a pollutant that reached the MS4 or the Waters of the United States.
- g. As to the seventh bulleted allegation in paragraph 33 of the Penalty Complaint, the City incorporates the defenses set out in subparagraph (c) above.

- h. As to the eighth bulleted allegation in paragraph 33 of the Compliance Order, the City relies on the defenses set out in subparagraph (f) above. The overspray involved possibly 12 spots of less than 1 mm in diameter composed of dried and environmentally inert paint on leaves of a shrub adjacent to the fence surrounding the facility.
- i. As to the ninth bulleted allegation in paragraph 33 of the Penalty Complaint, the presence of gravel around a barricade does not indicate a violation of the Clean Water Act or of the terms of the Permit, and there is no showing that the gravel entered the MS4.
- j. As to the tenth bulleted allegation in paragraph 33 of the Penalty Complaint, the type of "trash" is not identified in the allegations. There is no sufficient allegation that anything in the dumpster constituted a pollutant that reached the MS4 or the Waters of the United States. See subparagraph (d).
- k. As to the eleventh bulleted allegation in paragraph 33 of the Penalty Complaint, the type of trash "strewn about the site" is not identified. There is no sufficient allegation that anything in the dumpster constituted a pollutant that reached the MS4 or the Waters of the United States. See subparagraph (d). In addition, the City admits that plastic drinking water bottles were found on site, but the fence screens the debris from entering the MS4 and Waters of the United States. Furthermore, drinking water bottles are not pollutants.
- l. As to the twelfth bulleted allegation in paragraph 33 of the Penalty Complaint, the finding of an oil sheen on mud is insufficient to establish a violation of the Permit since there is no showing that the oil actually reached the MS4 and Waters of the United States.

35. The City denies the allegations of paragraph 35 of the Penalty Complaint. It affirmatively states that none of the allegations in Count 5 indicate a clear violation of the Clean Water Act, of the Stormwater Ordinance, or terms of the Permit. The de minimis nature of these allegations indicates that this Penalty Complaint is not supported by law or fact.

36. The City states that the Permit provision cited in paragraph 36 of the Penalty Complaint speaks for itself, and denies any allegations of wrongdoing.

37. The City states that the Permit provision cited in paragraph 37 of the

Penalty Complaint speaks for itself, and denies any allegations of wrongdoing.

38. The City states that the Permit provision cited in paragraph 38 of the Penalty speaks for Complaint itself, and denies any allegations of wrongdoing.

39. The City states that the Permit provision cited in paragraph 39 of the Penalty Complaint speaks for itself, and denies any allegations of wrongdoing.

40. The City states that the Permit provision cited in paragraph 40 of the Penalty Complaint speaks for itself, and denies any allegations of wrongdoing.

41. The “Stormwater Management Program” referred to in paragraph 41 of the Penalty Complaint was part of the NPDES permit that became effective in 1994. The Permit, and state and local law, recognize that the City has responsibilities for inspection under Chapter 35 of the City Code, which includes the City’s Erosion and Settlement Control (“E&S”) regulations. State and local law, and the Permit, recognize that the E&S ordinance, the Stormwater Ordinance, and the Chesapeake Bay Act ordinance are separate regulatory schemes, each with its own enforcement provisions. There is also a question of whether the Stormwater Management Plan was superseded by the 2001 VPDES permit. The City denies any allegations of wrongdoing.

Count 6 of the Penalty Complaint relies on an out-of-date document (the terms of which do not comport with allegations in Count 6) to blur the distinction between the two regulatory schemes. The purpose is an attempt to force the inspection requirements under the E&S program into an enforcement scheme that applies to enhance Stormwater Ordinance enforcement activities for all pollutants on contractors. Only the E&S Ordinance requires regular inspections of construction sites. Neither the Stormwater Ordinance nor the CBPA Ordinance mention

construction activities.

E&S regulations are derived from State Law. The Virginia Department of Conservation and Recreation (“DCR”) regulates E&S, and approves the City’s E&S Ordinance. DCR also certifies E&S inspectors. DCR has provided guidelines for enforcement of E&S provisions in its “Virginia Erosion and Sediment Control Handbook”(“E&S Handbook”), which in Chapter 1, under the heading of “How to Use This Handbook”, indicates that the E&S Handbook is intended as a “technical guide”, which indicates that the provisions of this document are intended as guidelines, not mandatory provisions. Also, DCR has approved an alternate inspection program for the City as of October 2, 2007, which the City follows, so the City is not bound by the state guidelines for the program.

The State of Virginia provides a checkoff form for these inspections. The minimum standards in the E&S Handbook, which are incorporated in Chapter 3 of that volume, and the checkoff form contains no mention of regular inspections of any pollutant other than sediment and soil.

The Penalty Complaint alleges that the City has a duty of inspection under the Stormwater Ordinance that is over and beyond the terms of that Ordinance, and the City denies that its Stormwater Ordinance inspectors have a positive duty to inspect construction sites in depth for all potential pollutants. Such inspections would exceed the City’s statutory and Constitutional authority.

42. The City denies the allegations of paragraph 42 of the Penalty Complaint. The City assumes that Petitioner means to refer to 4 VAC50-30-60, which specifies an inspection schedule mandated by the State unless the City has an alternate program. Since the City has such

a alternate program. Even if the City does have E&S inspection duties, these duties do not extend to Stormwater violations. The City further incorporates the defenses of paragraph 40 above.

43. The City denies the allegations of paragraph 43 of the Penalty Complaint, since the document it relies upon does not include the duties the Penalty Complaint alleges and has been superseded by the Permit. The City further incorporates paragraph 41 above.

44. The City denies the allegations of paragraph 44 of the Penalty Complaint.

45. The City denies the allegations of paragraph 45 of the Penalty Complaint, and affirmatively states that the citation to 4 VAC50-30 is incorrect.

46. The City denies the allegation of paragraph 46 of the Penalty Complaint and calls for strict proof thereof.

47. The City denies the allegation of paragraph 47 of the Penalty Complaint and calls for strict proof thereof.

48. The City denies the allegation of paragraph 48 of the Penalty Complaint and calls for strict proof thereof.

49. The City states that the language of the statute cited in paragraph 49 of the Penalty Complaint speaks for itself, and denies any allegations of wrongdoing.

50. The City states that it calls for proof of the allegations of paragraph 50 of the Penalty Complaint, and demands proof of the statutory authority for the inflationary rule cited from the Code of Federal Regulations.

51. The City states that it calls for proof of the allegations of paragraph 51 of the Penalty Complaint, and demands proof of the statutory authority for the inflationary rule cited

from the Code of Federal Regulations.

52. The City denies the allegations of paragraph 52 of the Penalty Complaint. It further contests EPA's assertion that the monetary amount is not a demand under 28 U.S.C. §2412. The City affirmatively states that the penalty assessed is excessive and not supported by the law and the facts, and, as such, City reserves all rights it may have pursuant to the provisions of 28 U.S.C. §2412(d)(1)(D).

53. The City denies the allegations of paragraph 53 of the Penalty Complaint, and states that the penalty is arbitrary and capricious..

54. As the City has filed an Answer to the Penalty Complaint, a Final Order is not appropriate. Further, **the City requests a hearing on this Complaint, and reserves all rights, immunities, privileges, and defenses available to it.**

55. The City will defend itself against any proposed increase in the penalty assessed. The City does not intend to rely on a defense of inability to pay.

56. The City intends to comply with any legal obligations it has under federal, state or local law alleged in paragraph 56 of the Penalty Complaint. Any additional compliance order, penalty complain, or other enforcement action that demands activity in excess of the legal responsibilities of the City and the maximum extent practicable standard imposed through regulations will be opposed.

AFFIRMATIVE DEFENSES

57. The City realleges and incorporates by reference paragraph 1 through 56.

58. The Compliance Order and the Penalty Complaint are improper as they mandate

that the City violate statutory and Constitutional law, and as a result this Penalty Complaint, to the extent it assesses penalties for the failure of the City to commit violations of the law, is groundless.

59. The Penalty Complaint is arbitrary and capricious, and is not rationally based upon the facts and law.

60. The Compliance Order and the Penalty Complaint assert federal control over the means and methods of local government, and attempts to force duties upon the City that are not substantiated by law. This is violative of the Tenth Amendment to the Constitution of the United States.

61. The Penalty Complaint exceeds existing statutory and constitutional authority, and the City intends to rely upon FRCP 11 and the provisions of 28 U.S.C. §2412(d)(1)(D).

62. The filing of Compliance Order and the Penalty Complaint is an attempt to compel the City to perform federal and state duties as an unfunded mandate without legal justification to do so.

63. There have been five audits of other Virginia localities similarly situated to the City of Newport News. Two of the localities had city maintenance yards that displayed a greater number of violations than those attributed to Newport News. Those localities received compliance orders that did not mention those cities' maintenance yards. This indicates differential and selective enforcement against similarly situated entities, and is a violation of Equal Protection standards.

64. The City of Newport News and Henrico County received the largest penalties of the six localities. Newport News and Henrico were the only two jurisdictions that included

attorneys on the Audit staff to address legal issues. The Penalty Complaint and that penalty complaint addressed to Henrico County penalizes those localities because of each entity's insistence on proof of legal authority and factual grounds for citation.

65. The City reserves all defenses, rights, and immunities that may become evident during the prosecution of this proceeding.

WHEREFORE, *the City of Newport News demands a hearing on this matter*, demands that the Penalty Complaint be dismissed, and for such further relief as the tribunal or Court may deem necessary and proper, including, but not limited to, sanctions under F.R.C.P. 11 and 33 U.S.C. §2412(d)(1)(D).

CITY OF NEWPORT NEWS

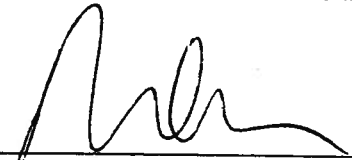
By


Deputy City Attorney

Joseph M. DuRant
Deputy City Attorney
State Bar No. 25053
Office of the City Attorney
2400 Washington Ave.
Newport News, VA 23607
(757)926-8416
(757)926-8549 (fax)
jdurant@nngov.com

CERTIFICATE

I certify that the information contained in or accompanying this submission is true, accurate, and complete to the best of my knowledge and belief. As to the parts of this submission that I cannot personally verify, I certify as the City's Manager having supervisory responsibility for the person who, acting under instructions, made the verification, and that the information is true, accurate, and complete.


Neil A. Morgan, City Manager

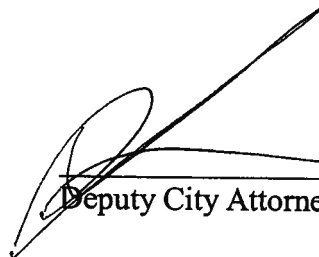
CERTIFICATE OF MAILING

I hereby certify that on this 26th day of October, 2011, a true copy of this pleading was sent by UPS to the following persons:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Andy Duchovnay
Assistance Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029



Deputy City Attorney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III

IN THE MATTER OF: :

CITY OF NEWPORT NEWS, :

Respondent. :

Docket No's CWA-03-2011-0161DN

ANSWER TO FINDINGS OF VIOLATION AND
ORDER FOR COMPLIANCE

COMES NOW the City of Newport News ("the City"), and in answer to the Findings of Violation and Order for Compliance ("Compliance Order") states as follows:

1. In response to paragraph 1 of the Compliance Order, the City admits that the Environmental Protection Agency ("EPA") has jurisdiction to find violations involving pollutants that enter into waters of the United States, and has authority to issue permits to do so. However, 33 U.S.C. §1342(a)(4) indicates that EPA has jurisdiction through its permit only over those alleged violations with a nexus to navigable waters. The City thus reserves the right to challenge any claimed violation that EPA is unable to prove resulted in pollutants entering navigable waters.

2. The City admits the allegations of paragraph 2 of the Compliance Order.

3. The City admits the allegations of paragraph 3 of the Compliance Order.

4. The City admits the allegations of paragraph 4 of the Compliance Order.

5. Although the City admits that stormwater from the City ultimately drains to waters of the United States, given the absence of allegations that supply the nexus between the issues addressed in the Compliance Order, the City denies the allegation of paragraph 5 of the

Compliance Order and demands strict proof that alleged violations resulted in pollutants actually entering waters of the United States. As generally understood, the City of Newport News does not border on the Chesapeake Bay, but on Hampton Roads Harbor, which drains into the Chesapeake Bay.

6. The City admits the allegations of paragraph 6 of the Compliance Order.

7. The City admits the allegations of paragraph 7 of the Compliance Order.

8. The City admits the allegations of paragraph 8 of the Compliance Order.

9. The City admits the allegations of paragraph 9 of the Compliance Order.

10. Regardless of the of the allegations in paragraph 10 of the Compliance Order, the City denies that it has jurisdiction over industrial wastes unless the same enters into the City's MS4. Onsite inspections of potential pollutant sources is under the authority of the Virginia Department of Environmental Quality ("DEQ"). Virginia recognizes the Dillon Rule, which limits the authority of a locality to those powers that are granted to it by the state legislature. This authority granted by the state is strictly construed. The allegations of paragraph 10 of the Compliance Order presuppose a level of authority that has not been granted to the City by any statutory enactment, and, as such, the City denies it has jurisdiction over any such industrial wastes until such time as a pollutant leaves the industrial site and enters the MS4. Likewise, the City's jurisdiction over wastewater conveyance extends only to the property it owns. It does not assume authority over private laterals or the ultimate outfalls, which are owned by the Hampton Roads Sanitation District. Only to the extent that a discharge of sewerage enters the City's MS4 does the City have jurisdiction to treat the incident as a violation of its Stormwater Ordinance.

11. The City admits the allegations of paragraph 11 of the Compliance Order.

12. The City admits the allegations of paragraph 12 of the Compliance Order.
13. The City admits the allegations of paragraph 13 of the Compliance Order.
14. The City admits the allegations of paragraph 14 of the Compliance Order.
15. Paragraph 15 of the Compliance Order does not require a response.
16. The City, in response to paragraph 16 of the Compliance Order, affirmatively states that Part I.A.1.a.(2) of the Permit is self-explanatory, and further that the terms of the Permit cannot impose requirements that exceed statutory and Constitutional limitations.
17. The City, in response to paragraph 17 of the Compliance Order, states that the referenced sections of the City's Stormwater Ordinance speak for themselves, and denies any wrongdoing.
18. The City denies the allegations of paragraph 18 of the Compliance Order, and calls for strict proof of said allegations. The allegations are further defective in the following ways:
 - a. The allegations assume duties well beyond those which are imposed on the City through its Stormwater Ordinance. The Clean Water Act requires remedial action to be taken "to the maximum extent practicable". This allegation indicates the use of a strict liability standard to be applied without regard to the circumstances involved or the practicability of the actions demanded.
 - b. The allegations indicate an intent to control the means and methods of legal and regulatory action by a sovereign entity, and are violative of the principles of federalism, and contrary to Amendment 10 of the U.S. Constitution.
 - c. The allegations are vague and fail to cite specific examples of any violation claimed, and further fail as they do not show that any action resulted in pollutants reaching the waters of the United States.
 - d. Inspections of sites under the Stormwater Ordinance as it existed at that time of the audit of June 14-15, 2010 ("the Audit") would have required that search warrants be issued, and a showing of probable cause would be necessary to have

obtained them. Inspection under these circumstances that EPA sets forth in paragraph 18 of the Compliance Order would violate the Fourth and Fourteenth Amendments of the U.S. Constitution and Article I, Section 10 of the Virginia Constitution. Furthermore, at the time of the Audit, there was no statutory authority for inspection of stormwater facilities on private property. As of July 1, 2011, a state statute went into effect which grants access for inspection. This legislative enactment, however, cannot override constitutional rights and privileges.

- e. Entry onto and actions upon private property without permission or a valid executed contract with the landowner may be violative of private property rights guaranteed through the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 11 of the Virginia Constitution. Furthermore, at the time of the Audit, there was no statutory authority for inspection of stormwater facilities on private property. As of July 1, 2011, a statute went into effect which grants access for inspection. This legislative enactment, however, cannot override constitutional rights and privileges.

19. The allegations of paragraph 19 of the Compliance Order are denied, and the City calls for strict proof thereof.

20. The City, in response to paragraph 20 of the Compliance Order, states that the language of Permit Part I.A.1.d(1) speaks for itself, .

21. The City denies the allegations of paragraph 21 of the Compliance Order. The City resolved both alleged violations as follows:

- a. The alleged violation of July 24, 2007 involved a portion of a privately owned parking lot that encroached on an RPA at 301 Buxton Avenue, Newport News, Virginia. This encroachment pre-existed the City's Chesapeake Bay Protection Act ordinance ("the CBPA ordinance") and was thus grandfathered. This status meant that the City could not prosecute this as a violation under the Fifth and Fourteenth Amendments of the United States Constitution or Article I, Section 11 of the Virginia Constitution. The issue was resolved when the City bought the entire lot, demolished not only the encroaching parking lot but all impervious surfaces on the site, and planted vegetation on the site. The lot was purchased under the City's Flood Assistance Program. Thus the City went far beyond any duty imposed on it by the Ordinance or the Permit.
- b. The alleged violation of May 8, 2008 allegedly occurred at 1113 Patrick Lane, a

privately owned parcel. The owner erected a shed within the RPA. The City required, pursuant to its CBPA ordinance, that the owner provide a water quality impact assessment, an application for a variance, and the installation of a bio-retention bed as a BMP. The variance was approved by the Board of Zoning Appeals, a body appointed by the Circuit Court of the City of Newport News, and the bio-retention bed was installed.

22. The City denies the allegations of paragraph 22 of the Compliance Order, and calls for strict proof thereof. The CBPA Ordinance, which was approved by the state agency that administers the VPDES Permit, does not require that the City periodically inspect sites where remediations of CBPA Ordinance violations have occurred. Furthermore, the City must have probable cause that a subsequent violation has occurred and obtain a warrant to enter onto the property. In both these cases, such probable cause did not exist.

23. The City denies the allegations of paragraph 23 of the Compliance Order, and calls for strict proof thereof.

24. The City states that the language of Part I.A.1.c. of the Permit speaks for itself, and denies all allegations of wrongdoing on its part. The City further states that Part I.A.1.c. (1) requires only an initial inspection of the facilities, and that Part I.A.1.c.(2) indicates that **“the permittee may monitor, or require the facility to monitor, stormwater discharges”**. This language is permissive, not mandatory, as is alleged in the Compliance Order.

25. The allegations of paragraph 25 of the Compliance Order are denied. The City stated during the Audit that it did not have authority to go onto industrial sites and charge owners with violations of environmental laws or regulations beyond those allotted to the City by the General Assembly. As pointed out repeatedly during the Audit, Virginia is a Dillon Rule state, and a Virginia locality has no authority to regulate an activity unless the General Assembly grants

that power. A Virginia locality is allowed to enact a Stormwater Ordinance, an Erosion and Sediment Control Ordinance, and a Chesapeake Bay Protection Act ordinance, all of which the City has done. The Stormwater Ordinance, specifically §37.1-22, prohibits discharge of pollutants into the City's MS4. Unless there are pollutants that are actually discharged into that system from the site, there is no violation and no probable cause to obtain a warrant to enter the property. The other two ordinances do not apply. The City has no authority under the Dillon Rule or constitutional law to go onto industrial premises uninvited and cite owners for potential violations of the Stormwater Ordinance. Even when there is an actual violation, a search warrant based on probable cause, in the absence of permission, may be necessary.

The City, during the Audit, raised the Dillon Rule and constitutional rights against invasion of property rights and unlawful search and seizure. The Compliance Order compels the City to take illegal and ultra vires actions.

The City's Fire Department is the only City Department allowed to go onto private property to make safety inspections. Even then, they must have administrative search warrants since the City's Stormwater personnel cannot go onto private property for inspections without a search warrant or permission, the Fire Marshals are asked to tell the Stormwater Division if they observe any stormwater Ordinance violations while on the premises. Such information would give the City probable cause for a search warrant. Since the Fire Marshals are not empowered to write citations for violation of the Stormwater Ordinance, a line for stormwater violations is not on their checklists.

26. The City denies the allegations of Paragraph 26 of the Compliance Order. The control applied is the passage of the Stormwater Ordinance itself. The City does not have

authority to exceed its terms, nor can a VPDES or NPDES Permit require ultra vires and illegal activity.

27. The City denies the allegations of Paragraph 27 of the Compliance Order. The approved program is the Stormwater Ordinance. The Permit itself makes monitoring elective, not mandatory. The City complied with the law, and no violation resulted.

28. The City denies the allegations of Paragraph 28 of the Compliance Order, and demands strict proof that any of the conditions found at Pete's Used Auto Parts amounted to a violation of the Stormwater Ordinance, the City's only tool for addressing potential environmental violations on private property. The City relies on all potential defenses to the Compliance Order.

29. The City denies the allegations of Paragraph 29 of the Compliance Order to the extent that they are intended to show a violation of Permit conditions. At the time of the Audit, City personnel opened a manhole at the site where stormwater effluent from Pete's Used Auto Parts enters the MS4. There was no oily sheen on the water nor petroleum smell in the outfall. Thus, the City had no probable cause to enter the facility, nor did it have authority under the Dillon Rule to act. The items that are cited as violations fall under the authority of DEQ. The owner of the facility produced the report of a recent DEQ inspection of the premises. If the City had cited the owner for the alleged violations noted, it would have been an *ultra vires* act, and violative of rights of the landowner under Fourth, Fifth and Fourteenth Amendment and further violative of Article I, Sections 10 and 11 of the Virginia Constitution.. Failure of the City to take ultra vires and illegal action cannot be the basis of a Permit violation.

30. The City denies the allegations of Paragraph 30 of the Compliance Order, and

affirmatively states that the allegation is sheer speculation and ineffective at stating that a violation of the City's stormwater ordinance had occurred. Violations of the law cannot be based on the fact that the ordinance may have been violated or could potentially be violated; an actual discharge to the MS4 is necessary. There is no evidence to prove as of the date of the Audit that any actual violation of the Stormwater Ordinance took place. Likewise, there is no evidence to prove that any flow from this site reached navigable waters, and as such there is no authority to charge this as a Permit violation.

31. The City denies the allegations of paragraph 31 of the Compliance Order. The City raised these legal issues during the Audit, but these issues are not considered in the Compliance Order.

32. The City states that the Permit language cited in paragraph 32 of the Compliance Order speaks for itself, and denies all allegations of wrongdoing. The City affirmatively states that none of the allegations of Count 5 can be proved to have resulted in pollutants reaching the MS4 or Waters of the United States.

33. The City denies that the allegations of paragraph 33 of the Compliance Order indicate a violation of the Stormwater Ordinance or the terms of the Permit. The municipal yard is surrounded by an eight foot fence, and is separated from the stream into which this surface water drains by a heavily-wooded buffer that varies in width from 50 feet to 250 feet according to measurements from the City's Geographic Information System ("GIS"). None of the allegations indicate the location on the yard of the alleged violation, the path or flow of stormwater runoff, or a sufficient nexus to show that any pollutants reached the MS4 and Waters of the United States. In particular:

- a. As to the first bulleted allegation in paragraph 33 of the Compliance Order, there are insufficient allegations as to the location of the truck and of the stain to indicate that the oil stain resulted in pollutants reaching the MS4 and Waters of the United States.
- b. As to the second bulleted allegation in paragraph 33 of the Compliance Order, on a large paved surface such as the municipal yard that is for the purpose of storing City equipment and vehicles, oil stains are inevitable. There is no allegation that these stains contributed pollution that reached the MS4 or Waters of the United States.
- c. As to the third bulleted allegation in paragraph 33 of the Compliance Order, stored metal parts, rusty or otherwise, are not pollutants entering an MS4 and the mere existence of the metal parts fail to indicate a violation. This citation of violation exceeds the EPA's authority.
- d. As to the fourth bulleted allegation in paragraph 33 of the Compliance Order, in the absence of a showing of the location and contents of the dumpster, there is no sufficient allegation to indicate that pollutants reached the MS4 or Waters of the United States.
- e. As to the fifth bulleted allegation in paragraph 33 of the Compliance Order, the City relies on the defenses set out in subparagraph (c) above.
- f. As to the sixth bulleted allegation in paragraph 33 of the Compliance Order, the paint indicated was for the purpose of painting street markings. This is a vinyl based paint which is environmentally inert when dried, which is the reason it is used for street markings. There is nothing to indicate that this alleged violation resulted in a pollutant that reached the MS4 or the Waters of the United States.
- g. As to the seventh bulleted allegation in paragraph 33 of the Compliance Order, the City relies on the defenses set out in subparagraph (c) above.
- h. As to the eighth bulleted allegation in paragraph 33 of the Compliance Order, the City relies on the defenses set out in subparagraph (f) above. The overspray involved possibly 12 spots of less than 1 mm in diameter composed of dried and environmentally inert paint on leaves of a shrub adjacent to the fence surrounding the facility.
- i. As to the ninth bulleted allegation in paragraph 33 of the Compliance Order, the presence of gravel around a barricade does not indicate a violation of the Clean Water Act or of the terms of the Permit, and there is no showing that the gravel entered the MS4.

- j. As to the tenth bulleted allegation in paragraph 33 of the Compliance Order, the type of "trash" is not identified in the allegations. There is no sufficient allegation that anything in the dumpster constituted a pollutant that reached the MS4 or the Waters of the United States. See subparagraph (d).
 - k. As to the eleventh bulleted allegation in paragraph 33 of the Compliance Order, the type of trash "strewn about the site" is not identified. There is no sufficient allegation that anything in the dumpster constituted a pollutant that reached the MS4 or the Waters of the United States. See subparagraph (d). In addition, the City admits that plastic drinking water bottles were found on site, but the fence screens the debris from entering the MS4 and Waters of the United States. Furthermore, drinking water bottles are not pollutants.
 - l. As to the twelfth bulleted allegation in paragraph 33 of the Compliance Order, the allegations of an oil sheen on mud is insufficient to establish a violation of the Permit since there is no showing that the oil actually reached the MS4 and Waters of the United States.
34. The City denies the allegations of paragraph 34 of the Compliance Order. It affirmatively states that none of the allegations in Count 5 indicate a clear violation of the Clean Water Act, of the Stormwater Ordinance, or terms of the Permit. The de minimis nature of these allegations indicates that this Compliance Order is not supported by law or fact.
35. The City states that the Permit provision cited in paragraph 35 of the Compliance Order speaks for itself and denies any allegations of wrongdoing.
36. The City states that the Permit provision cited in paragraph 36 of the Compliance Order speaks for itself and denies any allegations of wrongdoing..
37. The City states that the Permit provision cited in paragraph 37 of the Compliance Order speaks for itself and denies an allegations of wrongdoing.
38. The City states that the Permit provision cited in paragraph 38 of the Compliance Order speaks for itself and denies any allegations of wrongdoing
39. The City states that the Permit provision cited in paragraph 39 of the

Compliance Order speaks for itself and denies an allegations of wrongdoing. .

40. The “Stormwater Management Program” referred to in paragraph 40 of the Compliance Order was part of the NPDES permit that became effective in 1994. The Permit, and state and local law, recognize that the City has responsibilities for inspection under Chapter 35 of the City Code, which includes the City’s Erosion and Settlement Control (“E&S”) regulations. State and local law, and the Permit, recognize that Erosion and Sediment Control ordinance, the Stormwater Ordinance, and the Chesapeake Bay Act ordinance are separate regulatory schemes, each with its own enforcement provisions. There is also a question of whether the Stormwater Management Plan was superseded by the 2001 VPDES Permit. Any allegation of wrongdoing is denied.

Count 6 of the Compliance Order relies on an out-of-date document (the terms of which do not comport with the allegations in Count 6) to blur the distinction between the two regulatory schemes. The purpose is an attempt to force the inspection requirements under the E&S program into an enforcement scheme that applies to enhance enforcement activities for all pollutants on contractors. Only the E&S Ordinance requires regular inspections of construction sites. Neither the Stormwater Ordinance nor the CBPA Ordinance mention construction activities.

E&S regulations are derived from State Law. The Virginia Department of Conservation and Recreation (“DCR”) regulates E&S, and approves the City’s E&S Ordinance. DCR also certifies E&S inspectors. DCR has provided guidelines for enforcement of E&S provisions in its “Virginia Erosion and Sediment Control Handbook”(“E&S Handbook”), which in Chapter 1, under the heading of “How to Use This Handbook”, indicates that the E&S Handbook is intended as a “technical guide”, which indicates that the provisions of this document are intended

as guidelines, not mandatory provisions. Also, DCR has approved an alternate inspection program for the City as of October 2, 2007, which the City follows, and, as such, the City is not bound by the state guidelines for the program.

The State of Virginia provides a checkoff form for these inspections. The minimum standards in the E&S Handbook, which are incorporated in Chapter 3 of that volume, and the checkoff form contains no mention of regular inspections of any pollutant other than sediment and soil.

The Compliance Order alleges that the City has a duty of inspection under the Stormwater Ordinance that exceeds any provision in that Ordinance, and the City denies that its Stormwater Ordinance inspectors have a positive duty to inspect construction sites in depth for all potential pollutants. Such inspections would exceed the City's statutory and Constitutional authority.

41. The City denies the allegations of paragraph 41 of the Compliance Order. The City assumes that Petitioner means to refer to 4 VAC50-30-60, which specifies an inspection schedule mandated by the State unless the City has an alternate program. Since the City has such a alternate program. Even if the City does have E&S inspection duties, these duties do not extend to Stormwater violations. The City further incorporates the defenses of paragraph 40 above.

42. The City denies the allegations of paragraph 42 of the Compliance Order since the document it relies upon does not include the duties alleged in the Compliance Order and has been superseded by the Permit. The City further incorporates the defenses in paragraph 40 above.

43. The City denies the allegations of paragraph 43 of the Compliance Order.

44. The Compliance Order, as served on the City on September 30, 2011, ended with paragraph 43. The City sent correspondence on October 11, 2011 to EPA inquiring as to any missing pages and allegations. The City received the additional pages 7, 8 and 9, together with the attachments, on October 24, 2011. The City reserves the right to amend its Answer should it become apparent that there are addition pages and allegations in the original Compliance Order that were not served on the City on September 30, 2011.

As to the allegations of paragraph 44 of the Compliance Order, the City denies a violation, and incorporates the defenses set forth in paragraph 41 above.

45. The City denies the allegations of paragraph 45 of the Compliance Order, and requires strict proof of said alleged violation.

46. The City denies the allegations of paragraph 46 of the Compliance Order, and requires strict proof of said alleged violation.

47. The City denies the allegations of paragraph 47 of the Compliance Order, and requires strict proof of said alleged violation.

48. The City denies that it has failed to comply with the terms of the MS4 permit and 33 U.S.C. §1311, and calls for strict proof of any alleged violation.

49. The City denies that the Compliance Order is supported by proper legal authority, is based on the facts and law that apply, and further affirmatively states that the Order is void to the extent that it purports to order the City to undertake illegal and ultra vires actions.

50. The City denies the allegations of paragraph 50 of the Compliance Order, particularly that it should be required to alter a Stormwater Management Program plan to comply with the demands set out in the Compliance Order, as said Order requires activity that is beyond

the requirements of the Permit and the law, that it specifically requires the City to take actions that are ultra vires and illegal, and that it requires the City to prosecute actions that are not violations of the Stormwater Ordinance.

Also, as to the time limit set forth in paragraph 50 of the Compliance Order, the City did not receive this until October 24, 2011, and the sixty day period for submission should run from that date.

Finally, 40 CFR 122.22 has to do with the person that is authorized to sign off on a permit application or report. This regulation clearly does not address issues in Answers.

51. The City denies the allegations of paragraph 51 of the Compliance Order.

52. The City denies the allegations of paragraph 52 of the Compliance Order, and reserves all privileges, immunities, and defenses to any further action by the Petitioner.

AFFIRMATIVE DEFENSES

53. The City realleges and incorporates by reference paragraphs 1 through 52.

54. The Compliance Order is improper as it mandates that the City violate statutory and Constitutional law.

55. The Compliance order is arbitrary and capricious, and is not rationally based upon the facts and law.

56. The Compliance Order seeks to assert federal control over the means and methods of local government, and attempts to force duties upon the City that are not substantiated by law. This is violative of the Tenth Amendment to the Constitution of the United States.

57. The Compliance Order exceeds existing statutory and constitutional authority in

issuing the Compliance Order.

58. The Compliance Order is an attempt to require the City to perform federal and state duties as an unfunded mandate without legal justification to do so.

59. There have been five audits of other Virginia localities similarly situated to the City of Newport News. Two of the localities had city maintenance yards that displayed a greater number of violations than those attributed to Newport News. Those localities received compliance orders that did not mention those cities' maintenance yards. This indicates differential and selective enforcement against similarly situated entities, and is a violation of Equal Protection standards.

60. The City of Newport News and Henrico County received the largest penalties of of the six localities. Newport News and Henrico were the only two jurisdictions that included attorneys on the Audit staff to address legal issues. The Compliance Order, and the compliance order as to Henrico County, penalizes those localities because of each entity's insistence on proof of legal authority and factual grounds for citation.

61. The City reserves all defenses, rights, and immunities that may become evident during the prosecution of this proceeding.

62. The City reserves the right to amend its Answer should it become apparent that there are addition pages and allegations in the original Compliance Order that were not served on the City on September 30, 2011.

WHEREFORE, the City of Newport News demands a hearing on this matter, and demands that the Compliance Order be rescinded, and for such further relief as it may request.

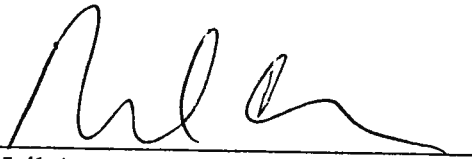
CITY OF NEWPORT NEWS

By  Deputy City Attorney

Joseph M. DuRant
Deputy City Attorney
State Bar No. 25053
Office of the City Attorney
2400 Washington Ave.
Newport News, VA 23607
(757)926-8416
(757)926-8549 (fax)
jdurant@nngov.com

CERTIFICATE

I certify that the information contained in or accompanying this submission is true, accurate, and complete to the best of my knowledge and belief. As to the parts of this submission that I cannot personally verify, I certify as the City's Manager having supervisory responsibility for the person who, acting under instructions, made the verification, and that the information is true, accurate, and complete.


Neil A. Morgan, City Manager

CERTIFICATE OF MAILING

I hereby certify that on this 26th day of October, 2011, a true copy of this pleading was sent by UPS to the following persons:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Andy Duchovnay
Assistance Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029



Deputy City Attorney

**MEMBER
JURISDICTIONS**

March 24, 2015

CHESAPEAKE

Jaime L. Bauer
Environmental Specialist II
Department of Environmental Quality
Commonwealth of Virginia
P.O. Box 1105
Richmond, VA 23218

FRANKLIN

GLOUCESTER

HAMPTON

RE: Amend and Reissue the Draft Authorization to Discharge under the
Virginia Stormwater Management Program and the Virginia Stormwater
Management Act

ISLE OF WIGHT

JAMES CITY

Dear Ms. Bauer:

NEWPORT NEWS

Thank you for extending the deadline to submit comments from February 27, 2015 to March 31, 2015. The following comments are made to the draft Authorization to Discharge under the Virginia Stormwater Management Program and the Virginia Stormwater Management Act ("Permits") and are submitted by the Hampton Roads Planning District Commission ("HRPDC") on behalf of the HRPDC's Phase I MS4 member jurisdictions ("MS4 Localities" or "Localities").¹

NORFOLK

POQUOSON

PORTSMOUTH

The Localities may submit their own comments as well and may choose to append these comments to their own and incorporate them by reference. We appreciate the opportunity to discuss comments with DEQ representatives on Monday, April 13, 2015, from 9:00 a.m. to 12:00 p.m. in the HRPDC Boardroom at 723 Woodlake Drive, Chesapeake, Virginia 23320.

SOUTHAMPTON

SUFFOLK

I. Introduction

SURRY

The MS4 Localities and HRPDC appreciate the Department of Environmental Quality's ("DEQ's") willingness to address many of our concerns with the draft Permits; however, some concerns remain in both the draft Permits and the draft Fact Sheets accompanying the Permits ("Fact Sheets").

VIRGINIA BEACH

WILLIAMSBURG

YORK

The MS4 Localities acknowledge that responsibility for this program has recently been transferred from the Department of Conservation and Recreation ("DCR") to DEQ. For this reason, it is important to note that HRPDC has already expressed concerns about the Bay TMDL provisions in the General Permit for Discharges of Stormwater from Small MS4s ("General Permit") and in the draft stages of the Phase I Permits. Such comments were made on those Permits in August 2011, December 2012, March 2013, and most recently in a meeting with DEQ on November 7, 2014.

¹ The large (Phase I) MS4 jurisdictions are the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, and Virginia Beach.

The prior comments are attached here and incorporated by reference (*see Attachment 1*). Many of the comments and concerns have remained consistent since the earliest communication on the topic.

II. Chesapeake Bay TMDL Action Planning

A. The baseline loading rates are inaccurate and their use in calculating baseline pollutant loads will require the MS4 Localities to achieve greater load reductions than necessary to reach their Bay TMDL target loads.

Although not fully explained in the Fact Sheet, we understand that the baseline loading rates in Section I.D. of the Permit were calculated using state-derived estimates of the types, numbers, and efficiencies of stormwater Best Management Practices (“BMPs”) installed on the acreage of developed impervious and pervious land in each river basin as of June 30, 2008. These estimates were then used as inputs to the Chesapeake Bay Watershed Model to produce basin-wide 2009 edge of stream (“EOS”) loading rates for each pollutant of concern (nitrogen, phosphorus, and total suspended solids). Neither DCR nor DEQ has provided a meaningful explanation of how it arrived at its BMP estimates. It is apparent that DCR’s BMP estimates are inconsistent with Locality-documented BMP implementation data as of June 30, 2008. During the Phase II Watershed Implementation Plan (“WIP”) process, the Localities found significant discrepancies between local and State BMP data and reported this information to DCR in February 2012, but DCR neither corrected its data nor responded to the Localities’ findings.² DCR’s failure to use updated BMP data prevented it from calculating accurate baseline loading rates and that problem remains to the present day.

B. The process of averaging flawed loading rates over the entire basin further discounts past BMP implementation by the MS4 Localities.

Baseline loading rates derived using BMP implementation data averaged over the entire James River basin fail to account for greater BMP implementation by localities that are subject to the Chesapeake Bay Preservation Act (“CBPA”), and therefore, over-estimate loading rates for these localities. As directed pursuant to the CBPA, the 38 Virginia localities in the tidal portion of the Chesapeake Bay Watershed (including 16 localities within the HRPDC) have been requiring developers to offset

² As an example, one locality in Hampton Roads contains 3,000 acres of developed land. According to DCR’s 2009 Progress Run, BMPs in this locality treat only 300 acres. Locality ground-truthed data indicates, however, that BMPs treat three times as many acres for a total of 900 acres. In this example, the state estimates that approximately 1/10 of the area of the locality is treated by BMPs, when in actuality, closer to 1/3 of the acres in the locality have the benefit of BMP treatment.

nutrient and sediment loads since 1990 by installing stormwater BMPs. The tidal localities receive only partial credit for the resulting lower loading rates because the basin-wide average BMP implementation estimates used by DCR simply offset the higher loading rates of those localities in the non-tidal portion of the basin rather than giving full credit to the localities that actually achieved the reductions.

C. The MS4 Localities should not be required to offset loads from private development that was constructed in accordance with stormwater regulations.

The Localities object to the requirement to offset projects that were approved for impervious cover at greater than 16 percent without stormwater treatment requirements. CBPA localities had programs approved by DEQ/DCR that allowed more than 16 percent of impervious cover and should not be required to offset loads from private development that was in compliance with stormwater regulations in effect at the time of development. The State should not require Localities to retroactively subsidize private development.

The Permit also requires Localities to offset loads from all known land disturbing projects that qualify under the “grandfathering” provision in the Virginia Stormwater Management Program (“VSMP”) regulations in Part I.B.2.a. This requirement is not appropriate for the following reasons:

1. If a project is “grandfathered,” only portions of the project for which construction commenced within the first Permit cycle and one renewal cycle are grandfathered pursuant to 9 VAC 25-870-48. Therefore such status is only applicable for a given period of time. Localities cannot predict which projects will be constructed in the requisite timeframe.
2. Localities should not have to accept the additional financial burden of offsets when the decision to approve the projects did not factor in this requirement.
3. Some grandfathered projects will never be constructed and Localities should not have to provide offsets for these projects. A determination of grandfathered status would not be made until such time that a project owner indicates intent to begin construction by making application for required City permits. For various reasons many projects which are approved never continue through to construction. The Localities have no way to predict this in advance and thus cannot plan for this requirement.

D. DCR has failed to address earlier requests from HRPDC and the Localities to correct the same deficiencies in the baseline loading rates identified in these comments.

HRPDC and the Localities alerted DCR (and now DEQ) to the above-described deficiencies on more than one occasion. Such comments were made in August 2011, December 2012, March 2013, and most recently in a meeting with DEQ on November 7, 2014. See Attachment 1. DCR responded to a number of our questions related to the baseline loading rates, but neither the Localities nor the HRPDC ever received a reasoned explanation and justification for the decision to develop the baseline loading rates in Section I.D. of the Permit using the State basin-wide BMP data and the 2009 Progress Run.

Two of the more obvious examples of this are (i) DCR's failure to revise BMP implementation data when Localities provided updated data for DCR's Phase II WIP data call, and (ii) DCR's reliance on a directive from the Environmental Protection Agency ("EPA") to use the 2009 Progress Run to derive the baseline loading rates rather than exercising its own judgment and discretion to determine whether some other model run would produce more accurate loading rates.³

The Fact Sheets provided by DEQ do not provide a reasoned rationale and justification for using the baseline loading rates in Section I.D. of the Permit. Instead, the Fact Sheets do little more than repeat much of what is in the Permit. The Phase I and Phase II WIPs fail to provide a rationale and justification for the baseline loading rates, and instead, like the Permit, offer only an abbreviated and inadequate explanation of the basis for the rates.

Although courts accord considerable deference to an agency's exercise of its discretion, the agency must exercise that discretion in a way that is not arbitrary and capricious. In short, the agency must provide a reasoned rationale and justification for its action.⁴ It is not enough for an agency to simply identify the basis for its action as DEQ has done.

³ See August 15, 2011, letter from John Carlock (HRPDC) to Joan Salvati (DCR) and August 31, 2011, email response from Noah Hill (DCR) to Jennifer Tribo (HRPDC), copies of which are in Attachment 1 to these comments.

⁴ See *Chem. Mfrs. Ass'n v. EPA*, 28 F.3d 1259, 1265-66 (D.C. Cir. 1994); *Va. Real Estate Comm'n v. Bias*, 226 Va. 264, 269, 308 S.E.2d 123, 125 (1983); *Env'tl. Defense Fund v. Va. State Water Control Bd.*, 15 Va. App. 271, 277-78, 422 S.E.2d 608, 611-12 (1992); *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 241-44, 369 S.E.2d 1, 19-24 (1988); *Atkinson v. Va. Alcoholic Beverage Control Comm'n*, 1 Va. App. 172, 176, 336 S.E.2d 527, 529-30 (1985).

E. Use of the 2010 No Action Model Run would address the deficiencies in the baseline loading rates.

DEQ can correct the above-described deficiencies by modifying Section I.D. of the Permit to instruct Localities to calculate their baseline loads using loading rates from the 2010 No Action Model Run instead of the 2009 Progress Run (the 2010 No Action Model Run reflects pollutant loads without BMPs). Under this approach, Localities would also submit data on actual BMP implementation and the resulting pollutant load reductions from these BMPs and receive credit for these reductions beyond their calculated baseline loads. This approach would (i) use the most accurate BMP data in the development of loading rates, (ii) avoid the use of inaccurate basin-wide loading rates because locality-specific information could be used to calculate more accurate locality-specific loading rates, and (iii) permit localities to obtain credit for all BMPs implemented within the locality up to the effective date of the Permit, which would result in more accurate pollutant load and load reduction calculations.

While we understand that EPA may have directed DCR to frame statewide strategies in terms of pounds of pollutants removed from the 2009 Progress Run to meet the statewide TMDL targets, we believe that DEQ should view this as a reporting requirement. DEQ could comply with EPA's request by requiring Localities to (i) calculate the number of total pounds of pollutants reduced by achieving a five percent reduction from the 2009 Progress Run, and (ii) then express that load reduction as a percent reduction from the 2010 No Action Model Run.

F. TMDL Action Plan and Implementation

In Part I.D.1.b.1., Localities suggest removing the word "approvable" and replacing it with "in accordance with the Chesapeake Bay TMDL Action Plan Guidance." Permittees cannot be subjected to non-compliance by requiring the submittal of "approvable" Action Plans. Permittees who make a good faith effort to submit complete and accurate Action Plans should not be deemed to be non-compliant because DEQ does not approve the Plan for reasons that were not reasonably foreseeable by the permittee when preparing its plan. Alternately, language could be added that permittees who fail to submit revised plans correcting deficiencies identified by DEQ may be deemed non-compliant with the Permit.

Based on the draft Bay TMDL Action Plan guidance, as BMPs are approved by the Bay Program they can also be used to comply with the Permit. It is important to Localities that this provision be included in the final Action Plan guidance.

We request that DEQ revise the Action Plan guidance so that the baseline loading rates reflect the 2010 No Action model run, as explained in Section II.E. of this comment letter. We ask that DEQ work diligently to provide the final Action Plan guidance as soon as possible but no later than the effective date of the Permit

The Localities request a clear definition of "James River Basin." There are areas in Hampton Roads that do not drain to the James River Basin such as East Ocean View in Norfolk, the Lynnhaven River in Virginia Beach, Little Creek in both Norfolk and Virginia Beach, or the Poquoson in Newport News and Back River in Hampton and Newport News.

The Localities ask for clarification on the following sentence in Part I.D.2.a.: "Implementation of BMPs on unregulated lands provided the baseline reduction is subtracted from the total reduction prior to application of the reduction towards meeting the required reductions."

G. TMDL Annual Reporting Requirements

Part I.D.d.5.b. of the Permit should be deleted. Planning for the second Bay TMDL Action Plan should be included in the second Permit. It is not reasonable to plan the second Action Plan before the conditions of the second Permit are known. Additionally, the Localities will have to start planning approximately one year after completing their first Action Plan, prior to the actual implementation and lessons learned timeframe.

III. Monitoring Requirements

A. Regional Monitoring Program

The Localities appreciate DEQ's consideration of the Regional Monitoring Program under development, but the monitoring requirements in Part I.C.1. are not feasible. Monitoring sites were selected to quantify the loading rates for specific land uses in the Coastal Plain. The Monitoring Program was not designed to determine the effectiveness of upstream BMPs. The Study design attempted to avoid drainage areas with BMPs, but this was not feasible in all localities. Any effect of existing BMPs will become part of the baseline loading rate for that drainage area. Once baseline loads are calculated, then the effect of future BMPs may be characterized by the Monitoring Program. The portion of the sentence in Part I.C.1. that states, ". . . as well as determine the effectiveness of any upstream BMPs as follows" should be removed.

B. pH, Dissolved Oxygen, and E. coli

The requirement to collect pH, dissolved oxygen and E. coli data should be removed from the Permit. Part I.C.1.b. requires that samples be collected four times per year and analyzed for 11 pollutants. The Regional Monitoring Program was designed to collect automated samples during rain events. Flow, conductivity, temperature, and turbidity will be collected using a flow meter and water quality sonde. The samples collected by the automated sampler will be analyzed for total nitrogen, nitrate nitrogen, total phosphorus, orthophosphate, and total suspended solids. Dissolved oxygen and pH cannot be collected by the automated sampler due to holding times, and the water quality sondes that collect dissolved oxygen and pH cannot be used by the Monitoring Program because they must be constantly submerged. The regional monitoring stations were purposely selected to be out of the tidal range and therefore will likely go dry between rain events. Current EPA sampling protocols do not allow for E. coli data to be collected by automated sampler. Neither the draft Permit nor the Fact Sheet provides any justification for adding these parameters to the Regional Monitoring Program.

C. Reporting Requirements

The monitoring stations are currently being installed, and it may take the first year of the Permit to ensure that all stations are consistently operating properly and collecting usable data. The draft Permit requires that "each annual report shall include a summary of the monitoring results and analyses and an interpretation of that data with respect to long-term patterns/trends." This is beyond the purpose of the Monitoring Program. The Monitoring Program is intended to calculate the baseline loading rates for urban land uses in Hampton Roads. Monitoring data will be submitted in annual reports after Permit year two, but loading rates may not be calculated until the end of the Permit term due to the uncertainty in the magnitude and frequency of rainfall events.

IV. Industrial Inspection Program

A. Industrial and High Risk Runoff Facilities

Part I.B.2.g. requires the permittee to implement a program to identify and control pollutants in stormwater discharges to the MS4 from industrial and high risk runoff facilities (e.g., municipal landfills; other treatment, storage or disposal facilities for municipal waste; hazardous waste treatment, storage, disposal, and recovery facilities; facilities that may be subject to EPCRA Title III, Section 313); and any other industrial or commercial discharges the permittee determines are contributing a

substantial pollutant loading to the MS4. This list of the types of facilities that are considered high risk for runoff, including landfills and waste management sites, does not coincide with the list presented in Part I.B.2.g. 1-6. For example, in Part I.B.2.g.6.b. of the Permit, automotive service shops are considered high risk runoff facilities, and they are not included in the introduction. The Permit should not specify the types of industrial facilities to inspect; the Localities should use best professional judgment to determine which facilities pose the greatest risk of polluting their MS4 systems.

B. State Responsibilities

The high risk facilities listed in Part I.B.2.g. are required to be permitted by DEQ. Discharge and effluent limits, housekeeping requirements, and other Permit conditions are set by DEQ in the applicable discharge permits. Requiring MS4 Localities to assume responsibility for facilities that are permitted by DEQ is not required by the stormwater management regulations, is arbitrary, and would divert finite local resources from those functions that are most efficiently and effectively performed by the Localities.

Part I.B.2.g.3. requires Permittees to review Discharge Monitoring Reports ("DMR") that are required to be submitted to DEQ by VPDES permits. Reviewing programs for permit compliance is the responsibility of DEQ. The Localities object to this requirement.

Further, the Localities have expressed concern that some might construe an exercise of authority under these clauses as unenforceable under the doctrine of the "Dillon Rule." The unprecedented shift of these responsibilities from the state to the localities could potentially expose the locality to public criticism, enforcement action, or litigation.

C. Prioritization of Industrial Inspections

Rather than inspect the outfalls of VPDES-permitted facilities, Localities should prioritize industrial inspections, perhaps focusing on those without VPDES permits. Localities should base their prioritized schedule on impairment or areas where there are concerns of pollutants, not those listed in this section. If the state finds these are high polluters, then they should be included in the Industrial Permit program.

V. Stormwater Management Projects through the TMDL Action Planning Process.

Part I.B.1. should be removed from the Permit. Localities will provide a list of stormwater projects 24 months after the Permit effective date as part of the Bay TMDL Action Plan.

The basis for requiring seven retrofit projects in Part I.B.2.b. is unclear and the number of projects is arbitrary. This requirement should be removed from the Permit. Localities are required to develop a Bay TMDL Action Plan and implement projects to reduce pollutant loads by five percent by the end of the Permit cycle. This metric is reasonable and makes a requirement for a specific number of projects irrelevant.

VI. Other Significant Issues

A. Effective Date of Permit and the Annual Reporting Period

Regardless of the Permit effective date, DEQ should ensure the annual reporting period coincides with the fiscal year (FY). If the effective date of the Permit does not coincide with the FY, then adjust the other Permit deadlines accordingly to allow for Locality budget cycles.

B. MS4 Program Plan Development

There is no timeframe provided for the development of the MS4 Program Plan in Part I.A.6. The Localities do not have active MS4 Program Plans; they are drafts developed as part of the Permit application process per DCR's request. The Localities require time to develop/update the MS4 Program Plan. We suggest allowing the Localities one year to develop/update the MS4 Program Plan. Additionally, the MS4 Program Plan and the Annual Reports should be recognized as different documents, all under this Permit. The MS4 Program Plan spells out the roles, responsibilities, and procedures for implementing Permit requirements, while the Annual Report is a compilation of specific tasks that were accomplished in that specific Permit year.

C. Permit Organization

The third bullet listed in Part I.B.2. requires the permittee to report their strategy to address maintenance of stormwater management controls that are designed to treat runoff solely from the individual residential lot on which they are located. This reporting requirement would be more appropriate in Part I.B.h.2.a.i., which is the section regarding individual residential lot BMPs. The Localities suggest language closer to 9 VAC 25-870-112.B. As an example: "stormwater management facilities

designed to treat stormwater runoff primarily from an individual residential lot on which they are located shall demonstrate to the satisfaction of the VSMP authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the VSMP authority.”

D. Stormwater Management of Roadways

1. Part I.B.2.c.1. requires the Localities to develop an accurate list of permittee maintained roads, streets, and parking lots. The list is supposed to include the street name, the miles of roadway not treated by BMPs, and miles of roadway treated by BMPs, no later than 12 months after the effective date of the Permit. The Localities request that this deadline be extended to 24 months after the effective date of the Permit to allow localities to develop the list in coordination with the Action Plan.
2. Localities request removing the requirement to report the parking lot in Part I.B.2.c.1., as Locality databases are organized by road names.
3. Part I.B.2.c.2. requires the permittee to develop and implement written protocols for permittee maintained roads, equipment maintenance areas, and material storage areas to minimize pollutant discharges. Localities request removing both “equipment maintenance” and “material storage” areas from the list. The high priority City facilities, where equipment maintenance and material storage occurs, will be addressed as part of the SWPPPs that are required in Part I.B.2.i.2.

E. Pest Management

Part I.B.2.d.4. of the Permit requires the Permittee to report the number of acres that are managed under Integrated Pest Management Plans (“IPM”). Localities request that the requirement be removed. This requirement is not justified or explained in the Fact Sheet.

F. Sanitary Sewer Inspection

Part 1.B.2.e. requires inspection of the sanitary sewer system. These provisions are not appropriate for the Localities as the Localities have different legal obligations that still meet the requirements under applicable provisions of state and federal law. Specifically, since 2007, the Localities have been coordinating a regional approach to establish a consistent and uniform framework for identifying and implementing regional and individual system improvements to be undertaken pursuant to the Special

Order by Consent (“Consent Order”) and, under that Consent Order, developed Regional Technical Standards addressing the following: (1) data collection and flow monitoring, (2) Sewer System Evaluation Survey (SSES) planning, (3) sewer system condition assessment, (4) rehabilitation planning, (5) hydraulic modeling and performance assessment, (6) regional design guidelines, (7) regional operating guidelines, and (8) other technical requirements. *See Attachment 2.*

On December 9, 2014, a new Consent Order (“Amended Consent Order”) terminated prior Consent Orders⁵ and implemented a sanitary sewer maintenance, operation, and management (MOM) program. The Hampton Roads Sanitation District (“HRSD”) has assumed sole responsibility for all aspects of the Regional Wet Weather Management Plan (“RWWMP”) and the HRSD MOM implementation in the Federal Consent Decree.⁶

The Localities are completing their required inspections and this requirement should be removed from the Permit.

G. Floatables

Part I.B.2.e.3. requires the development of a program to reduce the discharge of floatables. This requirement should be moved to Part I.B.2.j. Localities continue to address litter through public education and outreach campaigns. Localities should report on the effectiveness of the litter prevention programs instead of site surveys. Remove the fourth bullet in the Specific Reporting Requirements in Part I.B.2.e.3.

H. Illicit Discharges and Spills

1. The Permit requires in Part I.B.2.e. that each Annual Report includes a list of illicit discharges identified, the source, a description of follow-up activities and whether the illicit discharge has been eliminated. Localities instead request that a summary of illicit discharges be included in the Annual Report and the details of each be made available by request. If an illicit discharge exceeds the reportable quantity threshold, DEQ is provided detailed information in the 5-day letters as required in Part II of the Permit.
2. Part I.B.e.1. requires the permittee to prohibit, on a case-by-case basis, any individual non-stormwater discharge otherwise allowed under the paragraph that is determined to be contributing

⁵ *See Attachment 3*, p. 5, superseding and terminating Consent Orders issued by the State Water Control Board on September 26, 2007, December 17, 2001, and March 17, 2005.

⁶ *U.S. v. HRSD*, Civ. No. 2:09-cv-481, 2012 U.S. Dist. LEXIS 46984 (E.D.Va. Apr. 2, 2012).

significant amounts of pollutants to the MS4. The Localities request further explanation on what is considered a “significant amount” of pollutants. The word “significant” is imprecise, subjective, and unenforceable.

3. Part I.B.f. requires that a list of spills be included in each Annual Report. This section should only refer to reportable spills. It is unnecessary to report spills below the reporting threshold. Additionally, spills that occur at industrial sites and high priority municipal facilities will be tracked under SWPPP requirements.

I. Stormwater Infrastructure Management

1. Part I.B.h.d. requires the permittee to continue its storm sewer inspection program and inspect 100 percent of the MS4 system during the Permit term. Localities typically define the MS4 system as including all roadways, ditches, structures, curb lines, etc. It is not justified to inspect 100 percent of the system in a Permit term. Localities suggest they continue to evaluate the condition of their MS4 system using local knowledge and maintenance activities instead of inspecting 100 percent of the MS4 system during the Permit term. Localities prioritize their resources to the portions of the MS4 system that are in need of improvement. Localities will continue to document their maintenance plan as part of the MS4 Program Plan, with maintenance data such as the number of catch basins serviced, number of street-sweeping miles, and the number of city-owned BMPs maintained, etc.
2. Part I.B.2.h.1.e. requires permittees to dispose of wastes and wastewaters associated with stormwater system cleaning in accordance with local, state, and federal laws and regulations. Localities are required to comply with the law; it is unclear why this would be a Permit requirement.
3. In the specific reporting requirements of Part I.B.h.d., permittees are required to submit written inspection and maintenance procedures with the initial Annual Report. It is unclear why Localities would need to do this when these procedures will be submitted as part of the MS4 Program Plan.
4. In the specific reporting requirements of Part I.B.h.d, the permittee is required to report a list of activities including inspections, maintenance, and repair of stormwater infrastructure. Localities capture this data in multiple database systems; however, providing a comprehensive list of these tasks each year is an extensive

administrative task. Localities suggest providing a summary of the work completed and have the database systems on hand for inspection upon request.

J. City Facilities

Part I.B.2.i.1.d. should be revised to indicate that Localities will maintain municipal vehicles to minimize fluid leaks that discharge to the MS4 system. The municipal yards that house the vehicles will have SWPPP coverage.

K. Public Education/Participation

Part I.B.j.4. requires the permittee to post the MS4 Program Plan on their website no later than 30 days after the effective date of the Permit. As discussed in Section B above, there is no specified timeframe for the development of the MS4 Program Plan. Localities suggest stating that the Permittee post the MS4 Program Plan within 30 days of Plan approval.

L. Dry Weather Screening

Part I.B.2.l.1.a. of the Permit requires the permittee to screen a minimum of 100 of the City's MS4 outfalls each year. Localities suggest changing it to 25 of the City's MS4 structures, which would include catch basins and outfalls. Localities would use professional judgment to determine the areas of concern for screening. The last sentence of Part I.B.2.l.1.a. should be removed to allow for screening locations further upstream.

M. Wet Weather Screening

The wet weather screening program required in Part I.B.2.l.(2) should be removed from the Permit. This requirement is not defined or justified in the Permit or the Fact Sheet. The Regional Monitoring Program is a wet weather monitoring system designed to evaluate 10 to 15 storm events annually, with 40 to 60 samples collected from each station each year, depending on hydrologic conditions. Each locality is dedicating \$84,000/year to the Regional Monitoring Program. Additional wet weather screening is burdensome and not beneficial.

N. Structural and Source Controls Compliance Monitoring and Tracking

In the specific reporting requirements of Part I.B.2.h., the permittee is required to report historical BMPs in the fourth Annual Report. This requirement should be deleted. Localities will report the historic BMPs in each Annual Report and through DEQ's 2015 Historical Data Cleanup Request for Applications.

O. Other TMDL Action Plans

1. The Localities request that DEQ provide guidance on the Non-Bay TMDL Action Plans with a specific focus on bacteria and PCB TMDLs.
2. In Part I.D.2.b.4., the Localities suggest changing "facility of concern" to "high priority municipal facility" to be consistent with the rest of the Permit.
3. In Part I.D.2.g., BMPs that will be implemented in the "next permit term" should be included in the next Permit.
4. In Part I.D.2.g., the last sentence reads: "The permittee shall also evaluate and modify the estimated end date for achieving the applicable wasteload based on information acquired during the Permit cycle." It is not feasible for Localities to estimate the date for achieving the wasteload for PCBs without additional guidance and identification of BMPs or actions that effectively eliminate PCBs. Additionally, Localities have no control over legacy PCB sources.

P. MS4 Program Implementation

The requirements of section I.B.2. are not proper permit terms as they only restate existing law and regulation. By doing this in a VPDES permit, DEQ may subject Localities to EPA enforcement of state law and dual exposure to sanctions and penalties.

As an example, the EPA fined Norfolk for an alleged failure to obtain VSMP permits on City of Norfolk construction sites.⁷ Norfolk argued that this was not a violation of the current MS4 permit because the section under which the violation was noted required Norfolk to obtain VPDES Industrial Permits, not General Construction Permits. Norfolk argued that

⁷ Circa 2010.

Jaime L. Bauer
March 24, 2015
Page 15

this would be a violation a state law and was, therefore, under the jurisdiction of DCR and not the EPA.

It is not necessary or justified to restate each provision of state law and regulation as a separately enforceable aspect of permit compliance. The Localities request revision to remove any sections that appear to separately require Localities to comply with state law or regulations associated with Virginia Erosion and Sediment Control Law § 62.1-44.15:51, *et seq.* of the Code of Virginia, Virginia Erosion and Sediment Control Regulations 9 VAC 25-840 *et seq.*, the Virginia Stormwater Management Act § 62.1-44.15:24 of the Code of Virginia, or Virginia Stormwater Management Program Regulations 9 VAC 25-870.

Q. Definitions

This section includes a reference to the Virginia Stormwater Management Act; however, the citation is for the regulations.

In conclusion, the purpose of planning district commissions, as set out in the Code of Virginia, § 15.2-4207 is “. . . to encourage and facilitate local government cooperation and state-local cooperation in addressing on a regional basis problems of greater than local significance.” The Localities and the HRPDC appreciate your careful consideration of amendments to the Permits. It is our goal to work with DEQ to find reasonable solutions that will benefit all. Given the extent of the comments, the Localities do not support releasing the draft Permits for Public Notice at this time. We look forward to continued discussions on the presented concerns.

Sincerely,

Kenneth I. Wright
Chairman

JS

Attachment

Copy: David Paylor, DEQ
Melanie Davenport, DEQ



Cost Estimates for the Chesapeake Bay TMDL

Prepared by the staff of the
HAMPTON ROADS PLANNING DISTRICT COMMISSION



AUGUST 2011

Cost Estimate for Chesapeake Bay TMDL

The Hampton Roads Planning District Commission (HRPDC), with consultant Greeley and Hansen, developed three cost estimates for the implementation of stormwater sector requirements per the Chesapeake Bay Total Maximum Daily Load (TMDL). The first cost estimate is based on the draft TMDL, while the subsequent two estimates are based on the final Virginia Phase I Watershed Implementation Plan (WIP). A summary of this effort is provided below.

In October 2010, HRPDC developed a regional cost estimate for the stormwater sector requirements in the draft Chesapeake Bay TMDL. The EPA included “backstops” in the draft Bay TMDL requiring Virginia localities to implement the following reductions:

“...50 percent of urban MS4 lands meet aggressive performance standard through retrofit/ redevelopment; 50 percent of unregulated land treated as regulated, so that 25 percent of unregulated land meets aggressive performance standard; designation as necessary.”

On December 28, 2010, the EPA released the final Bay TMDL, which removed the “backstops” and accepted Virginia’s revised Phase I WIP. The Virginia Phase I WIP requires substantially less urban stormwater retrofits compared to the “backstops” in the draft Bay TMDL. The estimated cost of compliance for the urban stormwater requirements was reduced by a factor of about four.

Two cost estimates for the stormwater sector were developed based on Virginia’s final Phase I WIP. One estimate assumes all stormwater nutrient reductions will be implemented with structural BMPs; the second cost estimate assumes that non-structural nutrient management plans will be implemented as well as structural BMPs. The second cost estimate is based on Table 6-4.1 in Virginia’s Phase I WIP. This table assumes the non-structural BMP “Urban Nutrient Management” will be applied on 90% of urban pervious lands. The second cost estimate only includes the cost of structural BMPs; the cost of implementing “Urban Nutrient Management” was not included.

The estimated costs of implementing the backstops and the final Phase I WIP requirements are shown in Table 1. These costs represent the capital cost to construct BMPs; they do not include land acquisition or operation and maintenance costs. The construction of BMPs would be required by the 2025 deadline.

**Table 1: Estimated Costs to Implement Backstops and
Final Virginia Phase I WIP Requirements**

Locality	Draft TMDL: October 2010	Final TMDL / Virginia's Phase I WIP: December 2011	
	Cost to meet EPA backstops	Cost based on WIP Table 2.2 (no nutrient management)	Cost based on WIP Table 6-4.1 (includes nutrient management)
	(millions)	(millions)	(millions)
Chesapeake	\$1,367	\$255	\$255
Hampton	\$1,053	\$198	\$198
Newport News	\$1,166	\$224	\$224
Norfolk	\$1,384	\$318	\$280
Portsmouth	\$666	\$125	\$125
Virginia Beach	\$1,737	\$429	\$323
Isle of Wight County	\$231	\$79	\$40
James City County	\$501	\$149	\$87
Poquoson	\$90	\$14	\$14
Suffolk	\$628	\$211	\$109
Williamsburg	\$94	\$21	\$18
York County	\$594	\$94	\$94
Gloucester County	\$242	\$33	\$33
Surry County	\$40	\$13	\$7
Hampton Roads	\$9,793	\$2,163	\$1,806

The methodology used to develop these cost estimates is explained in the attached memo (see Attachment A). The cost estimates were based on applying the most effective types of structural BMPs to meet the stormwater nutrient reductions. The Phase I WIP cost estimates should be viewed as an order of magnitude estimate because one treatment scenario was applied across all localities in the region. In the Phase II WIP process, localities have an opportunity to identify nutrient management actions that may be more cost effective than the BMPs applied in the Phase I WIP cost estimate. An evaluation of opportunities and constraints in each locality will result in a more accurate estimate of the cost to implement the TMDL.

ATTACHMENT A

June 24, 2011 Greeley and Hansen Memorandum

**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

MEMO



GREELEY AND HANSEN

Date: June 24, 2011

**Subject: Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

1. Introduction

On December 28, 2010, the U.S. Environmental Protection Agency (EPA) released the Chesapeake Bay Total Maximum Daily Load Final Report (Bay TMDL). In the final Bay TMDL, EPA removed the “backstops” from the Virginia Phase I Watershed Implementation Plan (WIP). However, EPA indicated that “enhanced oversight” of Virginia’s urban stormwater sector was required to ensure that Waste Load Allocations (WLAs) and Load Allocations (LAs) are achieved and maintained. In general, the final Virginia Phase I WIP requires substantially less urban stormwater retrofits compared to the “backstops” in the draft Bay TMDL, which reduced the cost of compliance with the urban stormwater requirements by a factor of about four.

2. Summary of Regional Cost Estimates for Stormwater Retrofits

The Virginia Runoff Reduction Method of estimating BMP performance is the basis for the urban stormwater retrofit cost estimates. The Department of Conservation and Recreation (DCR) is updating the Virginia Stormwater Regulations. The proposed regulations incorporate the Runoff Reduction Method. The Virginia Runoff Reduction Method estimates the stormwater runoff volume reduction as well as the total load removed by specific stormwater Best Management Practices (BMPs). **Table 1** shows the urban stormwater retrofit capital cost estimates and the associated economic statistical information for the Hampton Roads localities.

Two sets of cost estimates are provided in **Table 1**. The first cost column is based on Table 2.1 and Table 2.2 in Virginia’s Phase I WIP document. Table 2.2 identifies the pounds of Total Phosphorus (TP) allocated to urban stormwater in each basin. The cost estimate considered the retrofits required to reduce the nutrient loads from EPA’s estimate of loads in 2009 to the urban runoff allocations required by 2025.

The second cost estimate in **Table 1** is based on Table 6-4.1 in Virginia’s Phase I WIP. It sets stormwater implementation goals in terms of percentage of impervious and pervious land that must be treated with specific types of BMPs. This table assumes additional reductions will occur from applying the non-structural BMP “Urban Nutrient Management” on 90% of urban pervious lands. It should be noted that “Urban Nutrient Management” is not the same thing as the “Phosphorus Fertilizer Ban” that was passed by the General Assembly. The cost estimate in column 1 is more expensive than the cost estimate in column 2 because less stormwater retrofits would be required if nutrient management practices are implemented.

**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

**June 24, 2011
Page 2**

**Table 1
Urban Stormwater Retrofit Cost Estimates for Hampton Roads Communities**

Category	Row	Item	Method 1	Method 2
			Reductions to Meet WLA in WIP Table 2.2	Virginia WIP Assumptions in Table 6-4.1 ⁽¹⁾
Estimated Costs	A	Estimated Capital Cost	\$2,163,000,000	\$1,806,000,000
	B	Estimated Annual Cost (\$/yr)	\$232,000,000	\$194,000,000
Estimated Average Annual Stormwater Bills ⁽²⁾	C	Residential House (\$/yr)	\$220	\$190
	D	Convenience Store/ Gas Station (\$/yr)	\$1,980	\$1,710
	E	Neighborhood Shopping Center (\$/yr)	\$13,200	\$11,400
	F	Church (\$/yr)	\$4,400	\$3,800
	G	Regional Mall (\$/yr)	\$198,000	\$171,000
Financial Burden	H	2009 Medium Household Income Estimate	\$55,404	\$55,404
	I	Residential House Stormwater Fee as Percentage of MHI (Row "C" / Row "H")	0.4%	0.3%

- Note:**
- (1) Includes performance of urban nutrient management
 - (2) Costs estimates represent bills for 5 types of properties assuming a stormwater billing system with an Equivalent Residential Unit (ERU) of 2,000 sf of impervious area.

Row "A" of Table 1 shows the capital cost to construct BMP retrofits. The estimated annual cost in Row "B" is based on financing the capital costs in Row "A" with a bond at a 5.5% interest rate¹ and a 30 year term plus O&M costs estimated at 5% of construction.

¹ The Virginia Clean Water Revolving Loan Fund (VCWRLF) is being expanded to allow the financing of stormwater projects. VCWRLF agreements typically have a 3% interest rate and a 20-year term.

**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

**June 24, 2011
Page 3**

In **Table 1**, the cost estimates in Rows "C" through "G" were based on the following assumptions.

- Average residential property has 2,000 square feet of impervious cover.
- Stormwater billing system would define an Equivalent Residential Unit (ERU) as 2,000 square feet of impervious cover.
- Stormwater bills would be based on the number of Equivalent Residential Units (ERU) on any type of property.
- The amount of impervious cover for each locality, based on EPA's Watershed Model Phase 5.3, was divided by 2,000 square feet to establish the number of ERUs in the locality.
- The total annual cost for each locality (Row B) was divided by the number of ERUs in each locality to determine a cost per ERU in each locality.
- Representative bills for different types of properties were calculated by assuming the type of property had a certain amount of impervious cover (**Table 2**). The number of ERUs in **Table 2** was multiplied by the cost per ERU to generate a representative bill for each type of property.

Table 2: Impervious Cover and Number of ERUs

Row	Item	Impervious Cover Sq. Ft.	Number of ERUs
C	Residential House (basis for ERU)	2,000	1
D	Convenience Store/ Gas Station	18,000	9
E	Neighborhood Shopping Center	120,000	60
F	Church	40,000	20
G	Regional Mall	1,800,000	900



**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

**June 24, 2011
Page 4**

3. Two Methodologies for determining urban stormwater nutrient reduction requirements according to Virginia's Phase I WIP

a. Method 1: Retrofit cost estimates based on meeting waste load allocations (WLAs) without Urban Nutrient Management

Method 1 estimates the cost of retrofits based on the allocations in Virginia WIP Table 2.2. This method assumes that all nutrient reductions for urban stormwater will be accomplished with structural BMPs.

**Virginia WIP Table 2.2:
Virginia Chesapeake Bay TMDL Allocations
Total Phosphorus - 2025 [Million Pounds/Year]**

Source Sector	Potomac	Rapp	York	James	Eastern Shore	VA TOTAL
Agriculture	0.674	0.533	0.157	0.622	0.111	2.097
Urban Runoff ¹	0.273	0.094	0.090	0.528	0.009	0.994
Wastewater ¹	0.278	0.079	0.155	0.967	0.008	1.487
On-Site ¹	0	0	0	0	0	0
Forest	0.205	0.183	0.126	0.543	0.015	1.072
Non-Tidal Dep	0.008	0.007	0.009	0.030	0.002	0.056
Total	1.438	0.896	0.538	2.690	0.145	5.707
Draft Allocations	1.472²	0.900	0.540	2.340⁴	0.163³	5.3574
	1.439				0.145	

1 Allocations for these source sectors can be attained through expansion of the VA Nutrient Credit Exchange Program

2 For Potomac Basin, a portion of the TP allocation is transferred to the TN allocation using 1:5 ratio [removed 34,000 lbs/yr from TP]

3 For E Shore, a portion of the TP allocation is transferred to the TN allocations using 1:5 ratio [removed 18,139 lbs/yr from TP]

4 Refer to James River Strategy section of the WIP for Virginia's approach to conform with EPA's draft July 1 TMDL allocations by 2025; 0.35 MPY will be included in the TMDL as an aggregated allocation for reduction in the wastewater sector; adjustments will be made, as warranted, in 2017 following completion of scientific review of chlorophyll standards

The percent reductions from the "2009 Progress" nutrient loads to the individual WLAs for the Phase I MS4 communities were used as the basis for the retrofit cost estimates as shown in **Table 3-1** and **Table 3-2**. **Table 4** shows the urban stormwater percent reductions required to meet the allocations in Table 2.2 of Virginia's WIP. The basin level percent reductions from the "2009 Progress" nutrient loads to the "Virginia WIP Allocation" in **Table 4** were used as the basis for retrofit cost estimates associated with the Hampton Roads communities not receiving an individual WLA.

**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

**June 24, 2011
Page 5**

**Table 3-1
Phase I MS4 Waste Load Allocations and Percent Reductions from 2009 Progress**

Item	Chesapeake			Hampton			Newport News		
	TN	TP	TSS	TN	TP	TSS	TN	TP	TSS
EPA's 2010 No Action ⁽¹⁾	0.288	0.060	5.1	0.178	0.042	7.1	0.224	0.047	7.4
EPA's 2009 Progress ⁽¹⁾	0.268	0.053	4.4	0.173	0.041	6.8	0.217	0.045	7.0
EPA's TMDL Allocation ⁽¹⁾	0.255	0.048	3.4	0.158	0.034	4.8	0.198	0.037	4.9
Percent Reduction b/t "2010 No Action" & "Allocation"	11%	20%	34%	11%	20%	33%	12%	21%	33%
Percent Reduction b/t "2009 Progress" & "Allocation"	5%	10%	22%	9%	17%	30%	9%	18%	30%

**Table 3-2
Phase I MS4 Waste Load Allocations and Percent Reductions from 2009 Progress**

Item	Norfolk			Portsmouth			Virginia Beach		
	TN	TP	TSS	TN	TP	TSS	TN	TP	TSS
EPA's 2010 No Action ⁽¹⁾	0.279	0.056	10.2	0.150	0.028	4.2	0.342	0.072	10.9
EPA's 2009 Progress ⁽¹⁾	0.266	0.053	9.2	0.140	0.025	3.6	0.330	0.068	10.1
EPA's TMDL Allocation ⁽¹⁾	0.249	0.046	7.1	0.134	0.023	2.9	0.306	0.058	7.4
Percent Reduction b/t "2010 No Action" & "Allocation"	11%	19%	31%	11%	18%	30%	11%	19%	32%
Percent Reduction b/t "2009 Progress" & "Allocation"	6%	13%	23%	5%	7%	18%	7%	14%	27%

**Table 4
Urban Stormwater Load Summary**

Source	York River Basin			James River Basin		
	TN	TP	TSS	TN	TP	TSS
EPA's 2009 Progress ⁽¹⁾	0.515	0.112	33.8	2.918	0.650	189.6
Virginia WIP Allocation ^{(1),(2)}	0.445	0.090	14.0	2.534	0.528	109.6
Percent Reduction from "2009 Progress" to "Allocation"	14%	20%	59%	13%	19%	42%

Note: (1) Loads in million pounds per year

(2) TN based on WIP Table 2.1. TP based on WIP Table 2.2. TSS allocations based on Bay TMDL (TSS allocation was not included in WIP)



**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

**June 24, 2011
Page 6**

b. Method 2: Retrofit cost estimates based on Virginia WIP Table 6-4.1

Method 2 estimates the cost of retrofits based on the implementation strategy in Virginia WIP Table 6-4.1. This method assumes that nutrient reductions for urban stormwater will be accomplished with nutrient management plans and structural BMPs. If urban nutrient management, a non-structural BMP, is not fully implemented, the structural BMPs identified in Table 6-4.1 would not provide the total stormwater reductions required by the TMDL.

**Virginia WIP Table 6-4.1:
Urban / Suburban Stormwater Scoping Scenario Level 2 Effective Net Reductions
Using Phase 5.3 Land Loads**

Land Use Category	Practice Description	Level 2 Practice % Coverage	Effective Net Reduction Prorated Over Entire Land Use Category Acreage		
			Total Nitrogen	Total Phosphorus	TSS
Impervious Urban High and Low Intensity	Impervious Cover Reduction	7.5%	0%	5%	6%
	Filtration Practices	7.5%	3%	4%	6%
	Infiltration Practices	8.0%	6%	7%	8%
	Total	23.0%	9%	16%	20%
Pervious Urban High and Low Intensity	Impervious Cover Reduction	-			
	Filtration Practices	5%	2%	3%	4%
	Infiltration Practices	5%	4%	4.25%	4.75%
	Total	10%	6%	7.25%	8.75%

Nutrient Reduction Efficiencies:

Impervious Cover Reduction: 2% N, 65% P, 85% Sediment
Filtration Practices: 40% N, 60% P, 85% Sediment
Infiltration Practices: 80% N, 85% P, 95% Sediment

Urban nutrient management is not the same thing as the Phosphate Fertilizer Band. Urban nutrient management is defined by EPA in the Scenario Builder documentation:

“Urban nutrient management involves the reduction of fertilizer to grass lawns and other urban areas. The implementation of urban nutrient management is based on public education and awareness, targeting suburban residences and businesses, with emphasis on reducing excessive fertilizer use.”

EPA has assigned removal efficiencies to Urban Nutrient Management of 17% for Total Nitrogen and 23% for Total Phosphorus².

The Virginia Phase I WIP did not clearly define the extent of nutrient management implementation required to meet the assumption in Table 6-4.1. Based on correspondence with DCR, urban nutrient management would include:

- 2,142 acres of nonagricultural state lands receiving nutrients.
- 5,000 acres of VDOT property annually receiving nutrients.
- Estimated 142,000 acres of lawn service in Bay watershed.
- 26,000 acres of golf courses in Bay watershed.

² Based on EPA's DOCUMENTATION FOR SCENARIO BUILDER VERSION 2.2, September 2010

**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

**June 24, 2011
Page 7**

- 90% of do-it-yourself home lawn fertilizer application through controls impacting both N and P use on 297,000 acres annually.
- 50,000 acres annually of nutrient management impacting general area fertilization (office parks, fertilizer municipal lands, etc.).

This list is not equal to 90% of urban pervious acres. It is a subset of acres estimated to receive fertilizer applications. For example, the 90% of do-it-yourself home lawn fertilizer acres would be 90% of the acres believed to be fertilized.

The Virginia Phase I WIP Table 6-4.1 shows the percent of impervious and pervious land area that must be treated with BMPs. **Table 5** shows the phosphorus reductions in the York River and James River basins if the BMPs identified in Table 6-4.1 were constructed. In the York River basin, the amount of phosphorous from urban stormwater would be reduced by 8.9%. In the James River basin, the amount of phosphorus from urban stormwater would be reduced by 9.4%.

**Table 5
Composite Percent Phosphorous Reductions based on Total Area**

Item	York River Basin				James River Basin			
	Area (Acres)	Percent of Area	Percent Reduction	Composite Percent Reduction	Area (Acres)	Percent of Area	Percent Reduction	Composite Percent Reduction
Impervious Cover	18,388	19%	16.00%	3.1%	127,631	24%	16.00%	3.9%
Pervious Cover	76,647	81%	7.25%	5.8%	399,743	76%	7.25%	5.5%
Total	95,035	100%		8.9%	527,374	100%		9.4%

4. Detailed Assumptions for the Basis of Retrofit Cost Estimates

The evaluation of the costs of the urban stormwater retrofit BMPs outlined in Virginia's WIP is based on Virginia Department of Conservation and Recreation (DCR) Virginia Runoff Reduction Method. This approach considers soil type, land cover, and BMP applicability for each land use. The assumptions used to estimate the performance and cost of potential urban stormwater retrofit BMPs and other stormwater controls (such as storage/reuse) to achieve pollutant reductions in the final EPA Chesapeake Bay TMDL are provided as follows.

a. Soil Type

Soil data (GIS layers) for each municipality is obtained from US Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Soil Data Mart. Hydrologic soil group (HSG) designations (A, B, C, D) are then assigned based on the soil type description. The percentage of land area for each hydrologic soil group is then calculated, as shown in **Table 6**.

Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities

June 24, 2011
Page 8

Table 6
Calculate BMP Treatment Volume by Hydrologic Soil Group (example)

Row	Municipality	Units	Soil A	Soil B	Soil C	Soil D
A	Percent of Soil Type		0.1%	49.3%	18.6%	32.1%
B	Pervious Area (Pervious Area in EPA Model x Row "A")	Acres	7	5,787	2,187	3,768
C	Pervious Runoff Coefficient		0.15	0.20	0.22	0.25
D	Runoff Volume for Pervious Area (Row "B" x Row "C" x 1" of Rain)	Acre-inch	1	1,157	481	942
E	Impervious Area (Impervious Area in EPA Model x Row "A")	Acres	2	1,679	635	1,093
F	Impervious Runoff Coefficient		0.95	0.95	0.95	0.95
G	Runoff Volume for Impervious Area (Row "E" x Row "F" x 1" of Rain)	Acre-inch	2	1,595	603	1,039
H	Locality Total Runoff Volume	Acre-inch	3	2,753	1,084	1,981

Soil data is analyzed for the following reasons:

- Runoff coefficients for pervious areas vary with the underlying hydrologic soil group (**Table 7**).
- Pervious and impervious land areas for each urban stormwater system are converted to runoff volume by multiplying land cover area by runoff coefficient with 1" of rainfall.
- Runoff volume is the basis for evaluating performance and estimating cost of BMPs.
- Soil data is important to determine applicability of infiltration practices. A summary of the percent Hydrologic Soil Group by locality is shown in **Table 8**.
- Hydrologic soil groups that embody strong infiltration characteristics such as type A and B may eliminate the need for an underdrain component, and the associated cost, on most BMPs.

Table 7: Runoff Coefficients by Hydrologic Soil Group

Land Cover	Soil A	Soil B	Soil C	Soil D
Forest	0.02	0.03	0.04	0.05
Pervious	0.15	0.20	0.22	0.25
Impervious	0.95	0.95	0.95	0.95

**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

**June 24, 2011
Page 9**

**Table 8
Hydrologic Soil Group from USDA NRCS Soil Data Mart**

Community	Soil A	Soil B	Soil C	Soil D
Chesapeake	1%	15%	6%	78%
Hampton	0%	7%	24%	69%
Newport News	0%	47%	24%	29%
Norfolk	0%	32%	26%	43%
Portsmouth	0%	44%	18%	38%
Virginia Beach	3%	32%	9%	56%
Isle of Wight County	11%	17%	39%	34%
James City County	2%	35%	47%	16%
Poquoson	0%	35%	11%	55%
Suffolk	2%	31%	36%	31%
Williamsburg	1%	11%	76%	12%
York County	0%	53%	33%	13%
Gloucester County	11%	51%	19%	19%
Surry County	3%	16%	67%	14%

b. Urban Land Area

The land area for urban stormwater runoff consists of pervious and impervious areas. EPA estimated the quantity of pervious and impervious based on satellite imagery. EPA's land use data from their interpretation of the satellite imagery typically under estimated the amount of impervious cover. If a municipality has detailed planimetrics GIS layers (such as streets, sidewalks, buildings, parking lots, driveways, trees, zoning, parcel, etc.), the pervious and impervious areas could be calculated from the GIS layers which would provide more accurate land area data in the following analyses.

For each locality, the impervious and pervious area is broken into land use categories based on ownership and surface characteristics to identify applicable BMPs. Effective runoff area for each category is then calculated based on soil type and runoff coefficient. **Table 11** shows the effective runoff area break-down based on the GIS data from a representative locality in Virginia. The cost model has been developed to allow each locality to input their own land use percentages, which could replace the default values shown in **Table 9** and currently used in the spreadsheet.

**Table 9
Percent of Runoff Volume by Land Use**

	Right of Way	Parking	Driveway	Building	Pervious
Municipal Owned Areas	21.8%	1.1%	0.4%	0.6%	1.6%
Commercial and Industrial		14.5%	1.2%	7.2%	7.4%
Residential Areas		3.7%	6.3%	10.3%	23.9%

**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

**June 24, 2011
Page 10**

c. Selection of Applicable BMPs

Applicable urban stormwater retrofit BMPs were selected based on the performance values for runoff reduction and nutrient removal efficiencies in Virginia DCR's BMP Clearinghouse. **Table 10** shows the list of BMPs in the DCR BMP Clearinghouse and their respective runoff reduction (RR) rate and mass reduction for TP, TN and TSS. The highlighted values in **Table 10** denote the better performing BMPs that were included in the cost estimate. A municipality may choose different BMPs based on its own experience and local characteristics.

**Table 10
Virginia DCR BMPs**

BMP	Description	Percent Reduction			
		RR	TP	TN	TSS
1. Vegetated Roof	1.a. Vegetated Roof #1 (Spec #5)	45%	45%	45%	73%
	1.b. Vegetated Roof #2 (Spec #5)	60%	60%	60%	80%
2. Rooftop Disconnection	2.a. Simple Disconnection to A/B Soils (Spec #1)	50%	50%	50%	75%
	2.b. Simple Disconnection to C/D Soils (Spec #1)	25%	25%	25%	63%
	2.c. To Soil Amended Filter Path as per specifications (existing C/D soils) (Spec #4)	50%	50%	50%	75%
	2.d. To Dry Well or French Drain #1 (Microinfiltration #1) (Spec #8)	50%	63%	58%	75%
	2.e. To Dry Well or French Drain #2 (Micro-Infiltration #2) (Spec #8)	90%	93%	92%	95%
	2.f. To Rain Garden #1 (Micro-Bioretenion #1) (Spec #9)	40%	55%	64%	70%
	2.g. To Rain Garden #2 (Micro-Bioretenion #2) (Spec #9)	80%	90%	92%	90%
	2.h. To Rainwater Harvesting (Spec #6)	78%	78%	78%	88%
	2.i. To Stormwater Planter (Urban Bioretention) (Spec #9, Appendix A)	40%	55%	64%	70%
3. Permeable Pavement	3.a. Permeable Pavement #1 (Spec #7)	45%	59%	59%	81%
	3.b. Permeable Pavement #2 (Spec #7)	75%	81%	81%	91%
4. Grass Channel	4.a. Grass Channel A/B Soils (Spec #3)	20%	32%	36%	44%
	4.b. Grass Channel C/D Soils (Spec #3)	10%	24%	28%	37%
	4.c. Grass Channel Compost Amended Soils as per specs (see Spec #4)	30%	41%	44%	51%
5. Dry Swale	5.a. Dry Swale #1 (Spec #10)	40%	52%	55%	64%
	5.b. Dry Swale #2 (Spec #10)	60%	76%	74%	76%
6. Bioretention	6.a. Bioretention #1 or Urban Bioretention (Spec #9)	40%	55%	64%	70%
	6.b. Bioretention #2 (Spec #9)	80%	90%	92%	90%
	6.c. Stormwater Planters (or Urban Bioretention) (Spec #9)	40%	55%	64%	70%
7. Infiltration	7.a. Infiltration #1 (Spec #8)	50%	63%	58%	75%
	7.b. Infiltration #2 (Spec #8)	90%	93%	92%	95%
8. Extended Detention Pond	8.a. ED #1 (Spec #15)	0%	15%	10%	50%
	8.b. ED #2 (Spec #15)	15%	28%	24%	58%
9. Sheetflow to Filter/Open Space	9.a. Sheetflow to Conservation Area with A/B Soils (Spec #2)	75%	75%	75%	75%
	9.b. Sheetflow to Conservation Area with C/D Soils (Spec #2)	50%	50%	50%	50%
	9.c. Sheetflow to Vegetated Filter Strip in A Soils or Compost Amended B/C/D Soils (Spec #2 & #4)	50%	50%	50%	75%
10. Wet Swale (Coastal Plain)	10.a. Wet Swale #1 (Spec #11)	0%	20%	20%	40%
	10.b. Wet Swale #2 (Spec #11)	0%	40%	20%	40%
11. Filtering Practices	11.a. Filtering Practice #1 (Spec #12)	0%	60%	20%	60%
	11.b. Filtering Practice #2 (Spec #12)	0%	65%	20%	60%
12. Constructed Wetland	12.a. Constructed Wetland #1 (Spec #13)	0%	50%	20%	50%
	12.b. Constructed Wetland #2 (Spec #13)	0%	75%	20%	50%
13. Wet Ponds	13.a. Wet Pond #1 (Spec #14)	0%	50%	20%	50%
	13.b. Wet Pond #1 (Coastal Plain) (Spec #14)	0%	45%	20%	50%
	13.c. Wet Pond #2 (Spec #14)	0%	75%	20%	50%
	13.d. Wet Pond #2 (Coastal Plain) (Spec #14)	0%	65%	20%	50%
14. Manufactured BMP	14.a. Bacteria/Filterra	0%	65%	45%	85%

**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

**June 24, 2011
Page 11**

d. Maximum Reductions by Urban Stormwater BMPs

Table 11 shows the assumed percentages of land area treated by each BMP for each land use category. With these assumptions, the total runoff volume (and the percentage) of runoff volume treated by each BMP is calculated, as shown in **Table 12**. Using the BMP performance data in **Table 12**, the runoff reduction and pollutant mass reduction for each BMP are then calculated as:

Formula: Runoff Volume Treated by BMP x Percent Reduction by that BMP / Total Runoff Volume

**Table 11
Basis for Maximum Percentage of Runoff Volume Treated by BMPs**

Land Use	Percent of Runoff Volume	Bioretention #2	Urban Bioretention (Curbside Planters)	Infiltration Trench / Basin (For A&B Soil)	Filter Strip	Rain Garden, Rain Barrel, Planter
Right of Way	21.8%	5%	5%	5%	5%	
Municipal Owned Parking	1.1%	40%				
Municipal Owned Driveway	0.4%	5%				
Municipal Owned Building	0.6%	30%				5%
Municipal Owned Pervious	1.6%	35%				
Townhouse, Apartment & Condominium Parking	3.7%	40%				
Residential Driveway	6.3%					
Residential Building	10.3%					5%
Residential Pervious	23.9%					5%
Commercial/Industrial Parking	14.5%	40%				
Commercial/Industrial Driveway	1.2%	5%				
Commercial/Industrial Building	7.2%	30%				
Commercial/Industrial Pervious	7.4%	35%				

**Table 12
Percentage of Runoff Volume Treated by BMPs**

Community	Bioretention #2	Urban Bioretention (Curbside Planters)	Infiltration Trench / Basin (For A&B Soil)	Filter Strip	Rain Garden, Rain Barrel	Total
Municipality	14.3%	1.1%	1.1%	1.1%	1.7%	19.4%

Table 13 shows the maximum mass reduction for total phosphorous by each BMP and the total reduction by all BMPs selected in **Table 11**.

**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

**June 24, 2011
Page 12**

**Table 13
Maximum Total Phosphorous Reduction by BMPs**

Community	Bioretention #2	Urban Bioretention (Curbside Planters)	Infiltration Trench / Basin (For A&B Soil)	Filter Strip	Rain Garden, Rain Barrel	Total
Municipality	12.9%	0.6%	1.0%	0.5%	1.2%	16.2%

e. Storage/Reuse

When the required reduction cannot be achieved by applying BMPs alone, it is assumed storage/reuse will be used to meet the reductions of the Bay TMDL.

Table 14 shows the calculation of storage volume required to achieve the TP removal required by the Virginia Phase I WIP. The storage volume is calculated based on 80% capture efficiency for the first 1-inch of rainfall. The reuse pumping capacity is determined based on an assumed 10-day dewatering rate. Depending on the land use, the storage facilities may be emptied faster, which may reduce the storage requirements.

**Table 14
Required Storage Volume (Example)**

A	B	C	D	E
Community	Percent Phosphorus Removal Required by Virginia WIP	Maximum Phosphorus Percent Reduction by BMPs	Percent TP Removal from Storage and Reuse (B - C)	Storage Volume ⁽³⁾ (MG)
Municipality	19%⁽¹⁾	16.2%⁽²⁾	4.8%	20

Note:

- (1) Based on percent phosphorus removal for the James River Basin "2009 progress" to the "Virginia WIP Allocation" in **Table 5** (above).
- (2) Based on value in **Table 11**.
- (3) Assume 10 days to empty and 80% efficiency to capture first 1" of rainfall and assumes that phosphorus is the limiting pollutant.

f. Cost Estimate for BMPs

Costs for BMPs are estimated by multiplying the total effective runoff area treated by each BMP by the unit cost of that BMP (\$/acre of effective runoff area). Unit costs of BMPs are typically reported in terms of cubic foot of stormwater volume treated, square foot of BMP size, or acre of treated area, etc. These unit costs were normalized to \$/acre of effective runoff area based on the BMP design criteria described in VA DCR's BMP Clearinghouse (**Table 15**). The unit costs of BMPs used to estimate the cost are based on the retrofit BMP costs reported by Center for Watershed Protection (CWP). We also referenced the BMP costs published by EPA (USEPA, 1999; USEPA, 2004).

**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities****June 24, 2011
Page 13**

The CWP costs were derived from literature and various demonstration projects. CWP costs were initially compiled in 2007 and the EPA costs were compiled in 2004. The CWP costs are “retrofit” costs which are generally about 2 to 3 times higher than the costs for new stormwater BMPs. The EPA documents do not specify whether the costs are for retrofits or new BMPs, but the costs for new BMPs reported by CWP are generally comparable to the EPA costs. Neither EPA nor CWP costs include land acquisition. The unit costs used to estimate stormwater retrofit costs are provided in **Table 15** (below).



**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

**June 24, 2011
Page 14**

**Table 15
Unit Costs from Center for Watershed Protection**

BMP	Description	Unit Cost per Effective Runoff Volume ⁽⁴⁾	
		Construction ⁽¹⁾	Capital ⁽²⁾
1. Vegetated Roof	1.a. Vegetated Roof #1 (Spec #5)	\$701,000	\$946,000
	1.b. Vegetated Roof #2 (Spec #5)	\$771,000	\$1,041,000
2. Rooftop Disconnection	2.a. Simple Disconnection to A/B Soils (Spec #1)	\$4,200	\$5,700
	2.b. Simple Disconnection to C/D Soils (Spec #1)	\$4,200	\$5,700
	2.c. To Soil Amended Filter Path as per specifications (existing C/D soils) (Spec #4)	\$35,000	\$47,000
	2.d. To Dry Well or French Drain #1 (Microinfiltration #1) (Spec #8)	\$52,000	\$70,000
	2.e. To Dry Well or French Drain #2 (Micro-Infiltration #2) (Spec #8)	\$56,000	\$76,000
	2.f. To Rain Garden #1 (Micro-Bioretenion #1) (Spec #9)	\$66,000	\$89,000
	2.g. To Rain Garden #2 (Micro-Bioretenion #2) (Spec #9)	\$81,000	\$110,000
	2.h. To Rainwater Harvesting (Spec #6)	\$103,000	\$139,000
	2.i. To Stormwater Planter (Urban Bioretenion) (Spec #9, Appendix A)	\$128,000	\$173,000
3. Permeable Pavement	3.a. Permeable Pavement #1 (Spec #7)	\$104,000	\$141,000
	3.b. Permeable Pavement #2 (Spec #7)	\$544,000	\$735,000
4. Grass Channel	4.a. Grass Channel A/B Soils (Spec #3)	\$26,000	\$35,000
	4.b. Grass Channel C/D Soils (Spec #3)	\$26,000	\$35,000
	4.c. Grass Channel Compost Amended Soils as per specs (see Spec #4)	\$57,000	\$77,000
5. Dry Swale	5.a. Dry Swale #1 (Spec #10)	\$52,000	\$70,000
	5.b. Dry Swale #2 (Spec #10)	\$57,000	\$77,000
6. Bioretenion	6.a. Bioretenion #1 or Urban Bioretenion (Spec #9)	\$62,000	\$84,000
	6.b. Bioretenion #2 (Spec #9)	\$103,000	\$139,000
	6.c. Stormwater Planters (or Urban Bioretenion) (Spec #9)	\$124,000	\$167,000
7. Infiltration	7.a. Infiltration #1 (Spec #8)	\$62,000	\$84,000
	7.b. Infiltration #2 (Spec #8)	\$68,000	\$92,000
8. Extended Detention Pond	8.a. ED #1 (Spec #15)	\$12,000	\$17,000
	8.b. ED #2 (Spec #15)	\$16,000	\$21,000
9. Sheetflow to Filter/Open Space	9.a. Sheetflow to Conservation Area with A/B Soils (Spec #2)	(3)	(3)
	9.b. Sheetflow to Conservation Area with C/D Soils (Spec #2)	(3)	(3)
	9.c. Sheetflow to Vegetated Filter Strip in A Soils or Compost Amended B/C/D Soils (Spec #2 & #4)	\$56,000	\$75,000
10. Wet Swale (Coastal Plain)	10.a. Wet Swale #1 (Spec #11)	\$52,000	\$70,000
	10.b. Wet Swale #2 (Spec #11)	\$65,000	\$87,000
11. Filtering Practices	11.a. Filtering Practice #1 (Spec #12)	\$82,000	\$111,000
	11.b. Filtering Practice #2 (Spec #12)	\$103,000	\$139,000
12. Constructed Wetland	12.a. Constructed Wetland #1 (Spec #13)	\$29,000	\$39,000
	12.b. Constructed Wetland #2 (Spec #13)	\$43,000	\$59,000
13. Wet Ponds	13.a. Wet Pond #1 (Spec #14)	\$21,000	\$28,000
	13.b. Wet Pond #1 (Coastal Plain) (Spec #14)	\$21,000	\$28,000
	13.c. Wet Pond #2 (Spec #14)	\$31,000	\$42,000
	13.d. Wet Pond #2 (Coastal Plain) (Spec #14)	\$31,000	\$42,000
14. Manufactured BMP	14.a. Bacteria/Filterra	\$75,000	\$101,000

(1) Construction unit costs are in December 2010 dollars (ENR CCI 8952). Source: Center for Watershed Protection. Urban Subwatershed Restoration Manual (USRM) 3, Appendix E (where costs were reported in 2006 dollars. ENR CCI of 7880 was used for 2006 to convert the costs to 2010 dollars).

(2) Capital cost is calculated as construction cost times 135%.

(3) These costs are highly site specific and depend on availability of conservation areas.

(4) Effective Runoff Volume is in units of Acre-inch. The calculation of Effective Runoff Volume is described in Table 8.

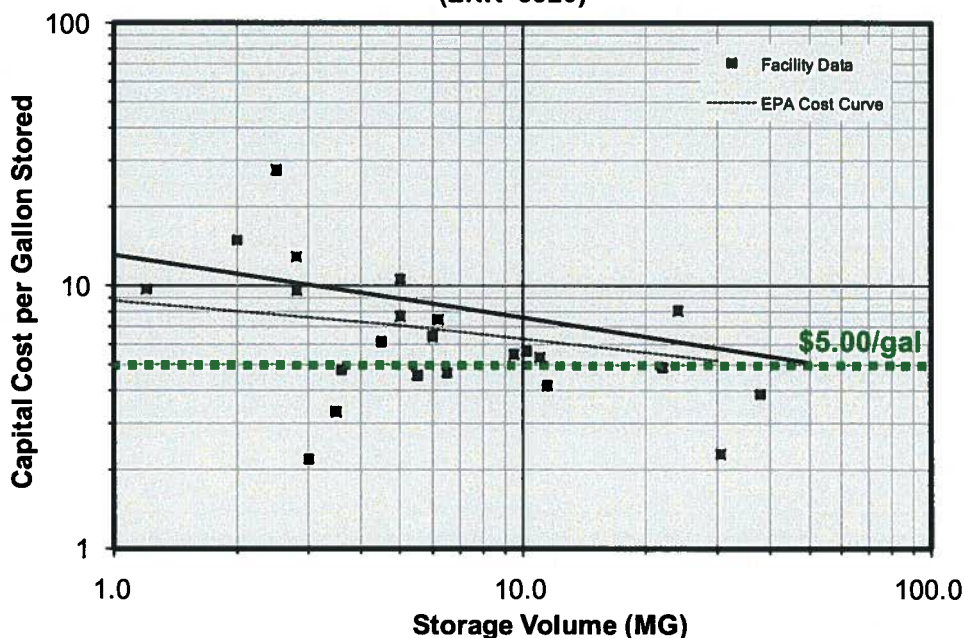
Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities

June 24, 2011
Page 15

a. Basis for Storage/Reuse Cost Estimates

Cost for storage facilities was estimated based on the cost data published by EPA, as shown in **Figure 1**. A unit cost of \$5.00/gal was used to estimate the storage facility cost and \$2.50/gal was used for water reuse pumping and distribution system. Cost estimates do not include tunnels or treatment of reused stormwater. It should be noted that the cost is generally for centralized storage facilities in an intense development area. Storage costs could be reduced if regional facilities already exist, but could be retrofitted with a new pumping facility. O&M and life cycle cost considerations would need to be factored into the decision to retrofit facilities.

Figure 1
Cost Data for Storage Facilities
(ENR=8920)



b. Estimated Capital Urban Stormwater Retrofit Costs

Table 16 summarizes the estimated capital urban stormwater retrofit costs. Column "B" represents the costs associated with 19% to 20% total phosphorus reductions if the urban nutrient management plans are not implemented. Since the required phosphorus reduction is greater than the 16% reduction that could reasonably be achieved with structural BMPs, this estimate includes the cost of centralized storage facilities to provide the additional nutrient reductions required to meet the TMDL.

Column "C" represents the costs associated with approximately an 8.9% to 9.4% phosphorus reduction from structural BMPs. Successful urban nutrient management plans would also be required but the cost associated with urban management plans is not included in Column "C" of **Table 16**. Since a phosphate fertilizer ban has been passed by the General Assembly, it is expected that Urban Nutrient Management will be successful at controlling phosphorus and the retrofit costs would be closer to the lower costs

**Chesapeake Bay TMDL and Final Phase I WIP
Urban Stormwater Cost Estimates for Hampton Roads Communities**

**June 24, 2011
Page 16**

shown in Column "C". However, an evaluation would be needed to determine if a pollutant other than phosphorus might drive the requirements for stormwater retrofits, such as sediment.

**Table 16
Estimated Capital Urban Stormwater Estimated Retrofit Costs**

A	B	C
Community	Reductions to Meet WLA in WIP Table 2.2 (Without Urban Nutrient Management) (millions)	Virginia WIP Assumptions in Table 6-4.1 (millions)
Chesapeake	\$255	\$255
Hampton	\$198	\$198
Newport News	\$224	\$224
Norfolk	\$318	\$280
Portsmouth	\$125	\$125
Virginia Beach	\$429	\$323
Isle of Wight County	\$79	\$40
James City County	\$149	\$87
Poquoson	\$14	\$14
Suffolk	\$211	\$109
Williamsburg	\$21	\$18
York County	\$94	\$94
Gloucester County	\$33	\$33
Surry County	\$13	\$7
Hampton Roads	\$2,163	\$1,806

5. Conclusion

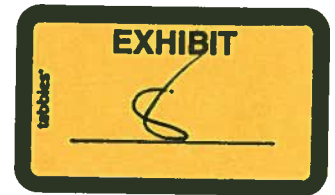
The cost estimates described in this document are provided as an order of magnitude estimates. The underlying methodology for the developing the cost estimates is the application of the Runoff Reduction Method which Virginia has adopted in its draft stormwater regulations. Cost estimates were also based on the assumption that phosphorus is the pollutant driving retrofit requirements. However, EPA's final Bay TMDL indicates that total suspended solid (TSS) reductions may require more BMP retrofits than phosphorus. Finally, several model updates and new policies will impact the assumptions in the cost estimates. Therefore, the cost estimates should be revised as new data, requirements and opportunities are identified.

General fund	\$332,349,000.00
Stormwater	\$16,800,000.00
Wastewater	\$21,084,000.00
Solid Waste	\$14,554,000.00

TOTAL	\$384,787,000.00
--------------	-------------------------

Stormwater	\$16,800,000.00
Wastewater	\$21,084,000.00
Solid Waste	\$14,554,000.00
Additional SW	\$14,933,333.34

Total	\$67,371,333.34
--------------	------------------------



ORDINANCE NO. 7059-14

AN ORDINANCE TO APPROVE THE BUDGET AND APPROPRIATE FUNDS TO OPERATE THE CITY OF NEWPORT NEWS FOR THE FISCAL YEAR BEGINNING JULY 1, 2014, AND ENDING JUNE 30, 2015 INCLUSIVE.

BE IT ORDAINED by the Council of the City of Newport News:

1. That the budget for the fiscal year beginning July 1, 2014, and ending June 30, 2015, inclusive, as indicated by the amounts appropriated in paragraph 2 below, be, and the same is hereby approved.

2. That the following amounts are hereby appropriated to the categories as listed in the aforesaid budget:

General, School Operating, Public Utilities, Vehicle and Equipment Services,
Special Revenue and Trust Operating, and Community Development Funds

OPERATING BUDGET**General Fund**

Legislative	\$605,013	
General Administration	4,800,706	
Financial	10,031,505	
Information Technology	8,328,426	
Board of Elections	429,948	
Judicial Administration	2,851,886	
Commonwealth Attorney	3,625,311	
Public Safety	75,470,723	
Corrections and Detention	31,434,599	
Inspections	2,794,955	
Engineering	5,513,505	
Public Works	20,567,816	
Health and Welfare	36,199,708	
Parks, Recreation and Cultural	17,444,449	
Planning and Community Development	3,112,257	
Nondepartmental	53,196,216	
Payments to Other Funds	<u>55,941,977</u>	
General Fund Operating Budget		\$332,349,000
City Support to School Operating Budget		<u>115,300,000</u>
Total General Fund Appropriations		\$447,649,000

Public Utilities Fund

Public Utilities Fund Operating Budget	\$63,944,028	
Payments to the City	12,917,274	
Capital Projects and Equipment	<u>7,088,698</u>	
Total Public Utilities Fund Appropriations		\$83,950,000

School Operating Fund

State Appropriations		\$172,840,201
Federal and Other Appropriations		6,229,000
City Appropriations		
1. Operating Funds	\$102,992,703	
2. Debt Service	<u>12,307,297</u>	
Total City Funding Support		<u>115,300,000</u>
Total School Operating Fund Appropriations		\$294,369,201

Vehicle and Equipment Services Fund

Vehicle and Equipment Services Fund	<u>\$14,067,000</u>	
Total Vehicle and Equipment Services Fund Appropriations		\$14,067,000

SUBTOTAL - APPROPRIATIONS **\$840,035,201**

LESS - Payments to Other Funds

From General Fund To School Fund	\$115,300,000
From Public Utilities Fund To General Fund	12,917,274
From Public Utilities Fund for Capital Improvements	7,088,698
From General Fund To Vehicle and Equipment Services Fund	8,346,450
From Vehicle and Equipment Services Fund To General Fund	<u>21,242</u>
	<u>\$143,673,664</u>

TOTAL OPERATING BUDGET **\$696,361,537**

SPECIAL REVENUE AND TRUST FUNDS

Auto Self Insurance Fund	\$1,429,000
General Liability Insurance Fund	1,693,000
Worker's Compensation Fund	3,250,200
Recreation Revolving Fund	4,518,000
Historical Services Fund	1,060,800
Golf Course Revolving Fund	1,675,700
Leeward Marina Revolving Fund	274,000
Tourism, Promotion, Development Fund	1,402,100
School Worker's Compensation Fund	1,548,300
School Textbook Fund	1,200,000
Street/Highway Maintenance Fund	15,470,905
Economic Development Fund	146,000
Law Library Fund	149,000
Stormwater Management Fund	16,800,000
Solid Waste Revolving Fund	14,554,000
Wastewater Fund	21,084,000
Peninsula Regional Animal Shelter Fund	1,790,000
Debt Service Fund	61,712,485
Economic Industrial Development Fund	31,728,000
Applied Research Center Fund	1,621,600
Parking Facilities Fund	651,800
Pension Trust Fund	66,321,800
City Retirement-Post Retirement Fund	10,245,000
Line of Duty Act Benefit Fund	<u>250,000</u>
 SUBTOTAL - SPECIAL REVENUE and TRUST FUNDS	 \$260,575,690
 LESS	
Payments from Other Funds	(\$130,161,581)
Payments to Other Funds	<u>(\$16,514,289)</u>
	<u>(\$146,675,870)</u>
 TOTAL SPECIAL REVENUE AND TRUST FUNDS	 \$113,899,820

COMMUNITY DEVELOPMENT FUND

Community Development Block Grant	<u>\$1,776,479</u>
 TOTAL CITY BUDGET	 <u>\$812,037,836</u>

3. That this ordinance shall be in effect on and after July 1, 2014.

Ordinance No. 7059-14
Page Four

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON MAY 13, 2014

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk